

31A-27a-101. Title -- Construction -- Commissioner's powers.

- (1) This chapter is known as the "Insurer Receivership Act."
- (2) The proceedings authorized by this chapter may be applied to:
 - (a) all insurers and reinsurers:
 - (i) who are doing, or have done, an insurance business in this state; and
 - (ii) against whom claims arising from that business may exist;
 - (b) all insurers who have the appearance of or claim they do an insurance business in this state;
 - (c) all insurers who have insureds resident in this state; and
 - (d) all other persons organized or in the process of organizing to do an insurance business as an insurer in this state.
- (3) This chapter shall be liberally construed to protect the interests of insureds, claimants, creditors, and the public generally through:
 - (a) early detection of any potentially hazardous condition in an insurer;
 - (b) prompt application of appropriate corrective measures;
 - (c) the commissioner making rules pertaining to Subsections (3)(a) and (b):
 - (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) that are similar to those set forth in the Model Regulation to Define Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition of the National Association of Insurance Commissioners;
 - (d) improved methods for conserving and rehabilitating insurers;
 - (e) enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;
 - (f) apportionment of any unavoidable loss in accordance with the statutory priorities set out in this chapter;
 - (g) lessening the problems of interstate receivership by:
 - (i) facilitating cooperation among states in delinquency proceedings; and
 - (ii) extending the scope of personal jurisdiction over debtors of the insurer outside this state;
 - (h) regulation of the business of insurance by the impact of the law relating to delinquency procedures and by substantive rules; and
 - (i) providing for a comprehensive scheme for the receivership of insurance companies and those subject to this chapter as part of the regulation of the business of insurance in this state.
- (4) A proceeding in the case of insurer insolvency and delinquency are integral aspects of the business of insurance and are of vital public interest and concern.
- (5) This chapter does not limit the powers granted the commissioner by other provisions of law.
- (6) The powers and authority of a receiver under this chapter are:
 - (a) cumulative; and
 - (b) in addition to any power or authority available to a receiver under a law other than this chapter.

Amended by Chapter 253, 2012 General Session

31A-27a-102. Definitions.

As used in this chapter:

(1) "Admitted assets" is as defined by and is measured in accordance with the National Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as incorporated in this state by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).

(2) "Affected guaranty association" means a guaranty association that is or may become liable for payment of a covered claim.

(3) "Affiliate" is as defined in Section 31A-1-301.

(4) Notwithstanding Section 31A-1-301, "alien insurer" means an insurer incorporated or organized under the laws of a jurisdiction that is not a state.

(5) Notwithstanding Section 31A-1-301, "claimant" or "creditor" means a person having a claim against an insurer whether the claim is:

- (a) matured or not matured;
- (b) liquidated or unliquidated;
- (c) secured or unsecured;
- (d) absolute; or
- (e) fixed or contingent.

(6) "Commissioner" is as defined in Section 31A-1-301.

(7) "Commodity contract" means:

(a) a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of:

(i) a board of trade or contract market under the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; or

(ii) a board of trade outside the United States;

(b) an agreement that is:

(i) subject to regulation under Section 19 of the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; and

(ii) commonly known to the commodities trade as:

- (A) a margin account;
- (B) a margin contract;
- (C) a leverage account; or
- (D) a leverage contract;

(c) an agreement or transaction that is:

(i) subject to regulation under Section 4c(b) of the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; and

(ii) commonly known to the commodities trade as a commodity option;

(d) a combination of the agreements or transactions referred to in this

Subsection (7); or

(e) an option to enter into an agreement or transaction referred to in this Subsection (7).

(8) "Control" is as defined in Section 31A-1-301.

(9) "Delinquency proceeding" means a:

(a) proceeding instituted against an insurer for the purpose of rehabilitating or liquidating the insurer; and

(b) summary proceeding under Section 31A-27a-201.

(10) "Department" is as defined in Section 31A-1-301 unless the context requires otherwise.

(11) "Doing business," "doing insurance business," and "business of insurance" includes any of the following acts, whether effected by mail, electronic means, or otherwise:

(a) issuing or delivering a contract, certificate, or binder relating to insurance or annuities:

(i) to a person who is resident in this state; or

(ii) covering a risk located in this state;

(b) soliciting an application for the contract, certificate, or binder described in Subsection (11)(a);

(c) negotiating preliminary to the execution of the contract, certificate, or binder described in Subsection (11)(a);

(d) collecting premiums, membership fees, assessments, or other consideration for the contract, certificate, or binder described in Subsection (11)(a);

(e) transacting matters:

(i) subsequent to execution of the contract, certificate, or binder described in Subsection (11)(a); and

(ii) arising out of the contract, certificate, or binder described in Subsection (11)(a);

(f) operating as an insurer under a license or certificate of authority issued by the department; or

(g) engaging in an act identified in Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups.

(12) Notwithstanding Section 31A-1-301, "domiciliary state" means the state in which an insurer is incorporated or organized, except that "domiciliary state" means:

(a) in the case of an alien insurer, its state of entry; or

(b) in the case of a risk retention group, the state in which the risk retention group is chartered as contemplated in the Liability Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.

(13) "Estate" has the same meaning as "property of the insurer" as defined in Subsection (30).

(14) "Fair consideration" is given for property or an obligation:

(a) when in exchange for the property or obligation, as a fair equivalent for it, and in good faith:

(i) property is conveyed;

(ii) services are rendered;

(iii) an obligation is incurred; or

(iv) an antecedent debt is satisfied; or

(b) when the property or obligation is received in good faith to secure a present advance or an antecedent debt in amount not disproportionately small compared to the value of the property or obligation obtained.

(15) Notwithstanding Section 31A-1-301, "foreign insurer" means an insurer domiciled in another state.

(16) "Formal delinquency proceeding" means a rehabilitation or liquidation

proceeding.

(17) "Forward contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).

(18) (a) "General assets" include all property of the estate that is not:

(i) subject to a properly perfected secured claim;

(ii) subject to a valid and existing express trust for the security or benefit of a specified person or class of person; or

(iii) required by the insurance laws of this state or any other state to be held for the benefit of a specified person or class of person.

(b) "General assets" includes the property of the estate or its proceeds in excess of the amount necessary to discharge a claim described in Subsection (18)(a).

(19) "Good faith" means honesty in fact and intention, and in regard to Part 5, Asset Recovery, also requires the absence of:

(a) information that would lead a reasonable person in the same position to know that the insurer is financially impaired or insolvent; and

(b) knowledge regarding the imminence or pendency of a delinquency proceeding against the insurer.

(20) "Guaranty association" means:

(a) a mechanism mandated by Chapter 28, Guaranty Associations; or

(b) a similar mechanism in another state that is created for the payment of claims or continuation of policy obligations of a financially impaired or insolvent insurer.

(21) "Impaired" means that an insurer:

(a) does not have admitted assets at least equal to the sum of:

(i) all its liabilities; and

(ii) the minimum surplus required to be maintained by Section 31A-5-211 or 31A-8-209; or

(b) has a total adjusted capital that is less than its authorized control level RBC, as defined in Section 31A-17-601.

(22) "Insolvency" or "insolvent" means that an insurer:

(a) is unable to pay its obligations when they are due;

(b) does not have admitted assets at least equal to all of its liabilities; or

(c) has a total adjusted capital that is less than its mandatory control level RBC, as defined in Section 31A-17-601.

(23) Notwithstanding Section 31A-1-301, "insurer" means a person who:

(a) is doing, has done, purports to do, or is licensed to do the business of insurance;

(b) is or has been subject to the authority of, or to rehabilitation, liquidation, reorganization, supervision, or conservation by an insurance commissioner; or

(c) is included under Section 31A-27a-104.

(24) "Liabilities" is as defined by and is measured in accordance with the National Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as incorporated in this state by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection 31A-4-113(1)(b)(ii).

(25) (a) Subject to Subsection (21)(b), "netting agreement" means:

(i) a contract or agreement that:

(A) documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts; and

(B) provides for the netting, liquidation, setoff, termination, acceleration, or close out under or in connection with:

(I) one or more qualified financial contracts; or

(II) present or future payment or delivery obligations or payment or delivery entitlements under the agreement, including liquidation or close-out values relating to the obligations or entitlements, among the parties to the netting agreement;

(ii) a master agreement or bridge agreement for one or more master agreements described in Subsection (25)(a)(i); or

(iii) any of the following related to a contract or agreement described in Subsection (25)(a)(i) or (ii):

(A) a security agreement;

(B) a security arrangement;

(C) other credit enhancement or guarantee; or

(D) a reimbursement obligation.

(b) If a contract or agreement described in Subsection (25)(a)(i) or (ii) relates to an agreement or transaction that is not a qualified financial contract, the contract or agreement described in Subsection (25)(a)(i) or (ii) is considered a netting agreement only with respect to an agreement or transaction that is a qualified financial contract.

(c) "Netting agreement" includes:

(i) a term or condition incorporated by reference in the contract or agreement described in Subsection (25)(a); or

(ii) a master agreement described in Subsection (25)(a).

(d) A master agreement described in Subsection (25)(a), together with all schedules, confirmations, definitions, and addenda to that master agreement and transactions under any of the items described in this Subsection (25)(d), are treated as one netting agreement.

(26) (a) "New value" means:

(i) money;

(ii) money's worth in goods, services, or new credit; or

(iii) release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the insurer or the receiver under applicable law, including proceeds of the property.

(b) "New value" does not include an obligation substituted for an existing obligation.

(27) "Party in interest" means:

(a) the commissioner;

(b) a nondomiciliary commissioner in whose state the insurer has outstanding claims liabilities;

(c) an affected guaranty association; and

(d) the following parties if the party files a request with the receivership court for inclusion as a party in interest and to be on the service list:

(i) an insurer that ceded to or assumed business from the insurer;

(ii) a policyholder;

(iii) a third party claimant;

- (iv) a creditor;
- (v) a 10% or greater equity security holder in the insolvent insurer; and
- (vi) a person, including an indenture trustee, with a financial or regulatory interest in the delinquency proceeding.

(28) (a) Notwithstanding Section 31A-1-301, "policy" means, notwithstanding what it is called:

- (i) a written contract of insurance;
- (ii) a written agreement for or affecting insurance; or
- (iii) a certificate of a written contract or agreement described in this Subsection

(28)(a).

(b) "Policy" includes all clauses, riders, endorsements, and papers that are a part of a policy.

(c) "Policy" does not include a contract of reinsurance.

(29) "Preference" means a transfer of property of an insurer to or for the benefit of a creditor:

(a) for or on account of an antecedent debt, made or allowed by the insurer within one year before the day on which a successful petition for rehabilitation or liquidation is filed under this chapter;

(b) the effect of which transfer may enable the creditor to obtain a greater percentage of the creditor's debt than another creditor of the same class would receive; and

(c) if a liquidation order is entered while the insurer is already subject to a rehabilitation order and the transfer otherwise qualifies, that is made or allowed within the shorter of:

(i) one year before the day on which a successful petition for rehabilitation is filed; or

(ii) two years before the day on which a successful petition for liquidation is filed.

(30) "Property of the insurer" or "property of the estate" includes:

(a) a right, title, or interest of the insurer in property:

(i) whether:

(A) legal or equitable;

(B) tangible or intangible; or

(C) choate or inchoate; and

(ii) including choses in action, contract rights, and any other interest recognized under the laws of this state;

(b) entitlements that exist before the entry of an order of rehabilitation or liquidation;

(c) entitlements that may arise by operation of this chapter or other provisions of law allowing the receiver to avoid prior transfers or assert other rights; and

(d) (i) records or data that is otherwise the property of the insurer; and

(ii) records or data similar to those described in Subsection (30)(d)(i) that are within the possession, custody, or control of a managing general agent, a third party administrator, a management company, a data processing company, an accountant, an attorney, an affiliate, or other person.

(31) Subject to Subsection 31A-27a-611(10), "qualified financial contract" means any of the following:

- (a) a commodity contract;
- (b) a forward contract;
- (c) a repurchase agreement;
- (d) a securities contract;
- (e) a swap agreement; or
- (f) a similar agreement that the commissioner determines by rule or order to be a qualified financial contract for purposes of this chapter.

(32) As the context requires, "receiver" means the commissioner or the commissioner's designee, including a rehabilitator, liquidator, or ancillary receiver.

(33) As the context requires, "receivership" means a rehabilitation, liquidation, or ancillary receivership.

(34) Unless the context requires otherwise, "receivership court" refers to the court in which a delinquency proceeding is pending.

(35) "Reciprocal state" means a state other than this state that:

- (a) enforces a law substantially similar to this chapter;
- (b) requires the commissioner to be the receiver of a delinquent insurer; and
- (c) has laws for the avoidance of fraudulent conveyances and preferential transfers by the receiver of a delinquent insurer.

(36) "Record," when used as a noun, means information or data, in whatever form maintained, including:

- (a) a book;
- (b) a document;
- (c) a paper;
- (d) a file;
- (e) an application file;
- (f) a policyholder list;
- (g) policy information;
- (h) a claim or claim file;
- (i) an account;
- (j) a voucher;
- (k) a litigation file;
- (l) a premium record;
- (m) a rate book;
- (n) an underwriting manual;
- (o) a personnel record;
- (p) a financial record; or
- (q) other material.

(37) "Reinsurance" means a transaction or contract under which an assuming insurer agrees to indemnify a ceding insurer against all, or a part, of a loss that the ceding insurer may sustain under the one or more policies that the ceding insurer issues or will issue.

(38) "Repurchase agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).

(39) (a) "Secured claim" means, subject to Subsection (39)(b):

- (i) a claim secured by an asset that is not a general asset; or
- (ii) the right to set off as provided in Section 31A-27a-510.

(b) "Secured claim" does not include:

- (i) a special deposit claim;
- (ii) a claim based on mere possession; or
- (iii) a claim arising from a constructive or resulting trust.

(40) "Securities contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).

(41) "Special deposit" means a deposit established pursuant to statute for the security or benefit of a limited class or classes of persons.

(42) (a) Subject to Subsection (42)(b), "special deposit claim" means a claim secured by a special deposit.

(b) "Special deposit claim" does not include a claim against the general assets of the insurer.

(43) "State" means a state, district, or territory of the United States.

(44) "Subsidiary" is as defined in Section 31A-1-301.

(45) "Swap agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1821(e)(8)(D).

(46) (a) "Transfer" includes the sale and every other and different mode of disposing of or parting with property or with an interest in property, whether:

- (i) directly or indirectly;
- (ii) absolutely or conditionally;
- (iii) voluntarily or involuntarily; or
- (iv) by or without judicial proceedings.

(b) An interest in property includes:

- (i) a set off;
- (ii) having possession of the property; or
- (iii) fixing a lien on the property or on an interest in the property.

(c) The retention of a security title in property delivered to an insurer and foreclosure of the insurer's equity of redemption is considered a transfer suffered by the insurer.

(47) Notwithstanding Section 31A-1-301, "unauthorized insurer" means an insurer transacting the business of insurance in this state that has not received a certificate of authority from this state, or some other type of authority that allows for the transaction of the business of insurance in this state.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

31A-27a-103. Insurer receivership laws.

(1) The state's insurer receivership laws consists of:

- (a) this chapter; and
- (b) Chapter 28, Guaranty Associations.

(2) The laws listed in Subsection (1) shall be construed together in a manner that is consistent.

Enacted by Chapter 309, 2007 General Session

31A-27a-104. Persons covered.

- (1) This chapter applies to:
- (a) an insurer who:
 - (i) is doing, or has done, an insurance business in this state; and
 - (ii) against whom a claim arising from that business may exist;
 - (b) a person subject to examination by the commissioner;
 - (c) an insurer who purports to do an insurance business in this state;
 - (d) an insurer who has an insured who is resident in this state; and
 - (e) in addition to Subsections (1)(a) through (d), a person doing business as follows:
 - (i) under Chapter 6a, Service Contracts;
 - (ii) under Chapter 7, Nonprofit Health Service Insurance Corporations;
 - (iii) under Chapter 8a, Health Discount Program Consumer Protection Act;
 - (iv) under Chapter 9, Insurance Fraternal;
 - (v) under Chapter 11, Motor Clubs;
 - (vi) under Chapter 13, Employee Welfare Funds and Plans;
 - (vii) under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention Groups;
 - (viii) as a bail bond surety company under Chapter 35, Bail Bond Act;
 - (ix) under Chapter 37, Captive Insurance Companies Act;
 - (x) a title insurance company;
 - (xi) a prepaid health care delivery plan; and
 - (xii) a person not described in Subsections (1)(e)(i) through (xi) that is organized or doing insurance business, or in the process of organizing with the intent to do insurance business in this state.
- (2) Notwithstanding Sections 31A-1-301 and 31A-27a-102, this chapter does not apply to a person licensed by the insurance commissioner as one or more of the following in this state unless the person engages in the business of insurance as an insurer:
- (a) an insurance agency;
 - (b) an insurance producer;
 - (c) a limited line producer;
 - (d) an insurance consultant;
 - (e) a managing general agent;
 - (f) reinsurance intermediary;
 - (g) an individual title insurance producer or agency title insurance producer;
 - (h) a third party administrator;
 - (i) an insurance adjuster;
 - (j) a life settlement provider; or
 - (k) a life settlement producer.

Amended by Chapter 319, 2013 General Session

31A-27a-105. Jurisdiction -- Venue.

- (1) (a) A delinquency proceeding under this chapter may not be commenced by a person other than the commissioner of this state.

(b) No court has jurisdiction to entertain, hear, or determine a delinquency proceeding commenced by any person other than the commissioner of this state.

(2) Other than in accordance with this chapter, a court of this state has no jurisdiction to entertain, hear, or determine any complaint:

(a) requesting the liquidation, rehabilitation, seizure, sequestration, or receivership of an insurer; or

(b) requesting a stay, an injunction, a restraining order, or other relief preliminary to, incidental to, or relating to a delinquency proceeding.

(3) (a) The receivership court, as of the commencement of a delinquency proceeding under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located, including property located outside the territorial limits of the state.

(b) The receivership court has original but not exclusive jurisdiction of all civil proceedings arising:

(i) under this chapter; or

(ii) in or related to a delinquency proceeding under this chapter.

(4) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the Utah Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver if the person served:

(a) in an action resulting from or incident to a relationship with the insurer described in this Subsection (4)(a), is or has been an agent, broker, or other person who has at any time:

(i) written a policy of insurance for an insurer against which a delinquency proceeding is instituted; or

(ii) acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding is instituted;

(b) in an action on or incident to a reinsurance contract described in this Subsection (4)(b):

(i) is or has been an insurer or reinsurer who has at any time entered into the contract of reinsurance with an insurer against which a delinquency proceeding is instituted; or

(ii) is an intermediary, agent, or broker of or for the reinsurer, or with respect to the contract;

(c) in an action resulting from or incident to a relationship with the insurer described in this Subsection (4)(c), is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding is instituted;

(d) in an action concerning assets described in this Subsection (4)(d), is or was at the time of the institution of the delinquency proceeding against the insurer, holding assets in which the receiver claims an interest on behalf of the insurer; or

(e) in any action on or incident to the obligation described in this Subsection (4)(e), is obligated to the insurer in any way whatsoever.

(5) (a) Subject to Subsection (5)(b), service shall be made upon the person named in the petition in accordance with the Utah Rules of Civil Procedure.

(b) In lieu of service under Subsection (5)(a), upon application to the receivership court, service may be made in such a manner as the receivership court

directs whenever it is satisfactorily shown by the commissioner's affidavit:

(i) in the case of a corporation, that the officers of the corporation cannot be served because they have departed from the state or have otherwise concealed themselves with intent to avoid service;

(ii) in the case of an insurer whose business is conducted, at least in part, by an attorney-in-fact, managing general agent, or other similar entity including a reciprocal, Lloyd's association, or interinsurance exchange, that the individual attorney-in-fact, managing general agent, or other entity, or its officers of the corporate attorney-in-fact cannot be served because of the individual's departure or concealment; or

(iii) in the case of a natural person, that the person cannot be served because of the person's departure or concealment.

(6) If the receivership court on motion of any party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the receivership court may enter an appropriate order to stay further proceedings on the action in this state.

(7) (a) Nothing in this chapter deprives a reinsurer of any contractual right to pursue arbitration except:

(i) as to a claim against the estate; and

(ii) in regard to a contract rejected by the receiver under Section 31A-27a-113.

(b) A party in arbitration may bring a claim or counterclaim against the estate, but the claim or counterclaim is subject to this chapter.

(8) An action authorized by this chapter shall be brought in the Third District Court for Salt Lake County.

(9) (a) At any time after an order is entered pursuant to Section 31A-27a-201, 31A-27a-301, or 31A-27a-401, the commissioner or receiver may transfer the case to the county of the principal office of the person proceeded against.

(b) In the event of a transfer under this Subsection (9), the court in which the proceeding is commenced shall, upon application of the commissioner or receiver, direct its clerk to transmit the court's file to the clerk of the court to which the case is to be transferred.

(c) After a transfer under this Subsection (9), the proceeding shall be conducted in the same manner as if it had been commenced in the court to which the matter is transferred.

(10) (a) Except as provided in Subsection (10)(c), a person may not intervene in a liquidation proceeding in this state for the purpose of seeking or obtaining payment of a judgment, lien, or other claim of any kind.

(b) Except as provided in Subsection (10)(c), the claims procedure set for this chapter constitute the exclusive means for obtaining payment of claims from the liquidation estate.

(c) (i) An affected guaranty association or the affected guaranty association's representative may intervene as a party as a matter of right and otherwise appear and participate in any court proceeding concerning a liquidation proceeding against an insurer.

(ii) Intervention by an affected guaranty association or by an affected guaranty association's designated representative conferred by this Subsection (10)(c) may not constitute grounds to establish general personal jurisdiction by the courts of this state.

(iii) An intervening affected guaranty association or the affected guaranty association's representative are subject to the receivership court's jurisdiction for the limited purpose for which the affected guaranty association intervenes.

(11) (a) Notwithstanding the other provisions of this section, this chapter does not confer jurisdiction on the receivership court to resolve coverage disputes between an affected guaranty association and those asserting claims against the affected guaranty association resulting from the initiation of a receivership proceeding under this chapter, except to the extent that the affected guaranty association otherwise expressly consents to the jurisdiction of the receivership court pursuant to a plan of rehabilitation or liquidation that resolves its obligations to covered policyholders.

(b) The determination of a dispute with respect to the statutory coverage obligations of an affected guaranty association by a court or administrative agency or body with jurisdiction in the affected guaranty association's state of domicile is binding and conclusive as to the affected guaranty association's claim in the liquidation proceeding.

(12) Upon the request of the receiver, the receivership court or the presiding judge of the Third District Court for Salt Lake County may order that one judge hear all cases and controversies arising out of or related to the delinquency proceeding.

(13) A delinquency proceeding is exempt from any program maintained for the early closure of civil actions.

Enacted by Chapter 309, 2007 General Session

31A-27a-106. Exemption from fees.

The receiver may not be required to pay any of the following fees to a public officer of this state:

- (1) filing fees;
- (2) recording fees;
- (3) transcript fees;
- (4) copying fees;
- (5) certification fees; or
- (6) authentication fees.

Enacted by Chapter 309, 2007 General Session

31A-27a-107. Notice and hearing on matters submitted by the receiver for receivership court approval.

(1) (a) Upon written request to the receiver, a person shall be placed on the service list to receive notice of matters filed by the receiver. The person shall include in a written request under this Subsection (1)(a) the person's address, facsimile number, or electronic mail address.

(b) It is the responsibility of the person requesting notice to:

(i) inform the receiver in writing of any changes in the person's address, facsimile number, or electronic mail address; or

(ii) request that the person's name be deleted from the service list.

(c) (i) The receiver may serve on a person on the service list a request to

confirm continuation on the service list by returning a form.

(ii) The request to confirm continuation may be served periodically but not more frequently than every 12 months.

(iii) A person who fails to return the form described in this Subsection (1)(c) may be removed from the service list.

(d) Inclusion on the service list does not confer standing in the delinquency proceeding to raise, appear, or be heard on any issue.

(e) The receiver shall:

(i) file a copy of the service list with the receivership court; and

(ii) periodically provide to the receivership court notice of changes to the service list.

(f) Notice may be provided by first-class mail postage paid, electronic mail, or facsimile transmission, at the receiver's discretion.

(2) Except as otherwise provided by this chapter, notice and hearing of any matter submitted by the receiver to the receivership court for approval under this chapter shall be conducted in accordance with this Subsection (2).

(a) The receiver:

(i) shall file a motion:

(A) explaining the proposed action; and

(B) the basis for the proposed action; and

(ii) may include any evidence in support of the motion.

(b) If a document, material, or other information supporting the motion is confidential, the document, material, or other information may be submitted to the receivership court under seal for in camera inspection.

(c) (i) The receiver shall provide notice and a copy of the motion to:

(A) all persons on the service list; and

(B) any other person as may be required by the receivership court.

(ii) Notice may be provided by first-class mail postage paid, electronic mail, or facsimile transmission, at the receiver's discretion.

(iii) For purposes of this section, notice is considered to be given on the day on which it is deposited with the United States Postmaster or transmitted, as applicable, to the last-known address as shown on the service list.

(d) (i) A party in interest objecting to the motion shall:

(A) file an objection specifying the grounds for the objection within:

(I) 10 days of the day on which the notice of the filing of the motion is sent; or

(II) such other time as the receivership court may specify; and

(B) serve copies on:

(I) the receiver; and

(II) any other person served with the motion within the time period described in this Subsection (2)(d)(i).

(ii) In accordance with the Utah Rules of Civil Procedure, days may be added to the time for filing an objection if the notice of the motion is sent only by way of United States mail.

(iii) An objecting party has the burden of showing why the receivership court should not authorize the proposed action.

(e) (i) If no objection to the motion is timely filed:

(A) the receivership court may:
(I) enter an order approving the motion without a hearing; or
(II) hold a hearing to determine if the receiver's motion should be approved; and
(B) the receiver may request that the receivership court enter an order or hold a hearing on an expedited basis.

(ii) (A) If an objection is timely filed, the receivership court may hold a hearing.

(B) If the receivership court approves the motion and, upon a motion by the receiver, determines that the objection is frivolous or filed merely for delay or for other improper purpose, the receivership court may order the objecting party to pay the receiver's reasonable costs and fees of defending against the objection.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

31A-27a-108. Injunctions and orders.

(1) The receivership court may issue an order, process, or judgment including stays, injunctions, or other orders necessary or appropriate to carry out:

- (a) this chapter; or
- (b) an approved rehabilitation plan.

(2) This chapter may not be construed to limit the ability of the receiver to apply to a court other than the receivership court in any jurisdiction:

- (a) to carry out this chapter; or
- (b) for the purpose of pursuing claims against any person.

(3) Except as provided in Subsections (5) and (6) or as otherwise provided in this chapter, the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of:

(a) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, an arbitration proceeding, or other action or proceeding against the insurer:

(i) that was or could have been commenced before the commencement of the delinquency proceeding under this chapter; or

(ii) to recover a claim against the insurer that arises before the commencement of the delinquency proceeding under this chapter;

(b) the enforcement against the insurer or against property of the insurer of a judgment obtained before the commencement of the delinquency proceeding under this chapter;

(c) an act to:

(i) obtain or retain possession of:

(A) property of the insurer; or

(B) property from the insurer; or

(ii) exercise control over property or records of the insurer;

(d) an act to create, perfect, or enforce a lien against property of the insurer;

(e) an act to collect, assess, or recover a claim against the insurer that arises before the commencement of a delinquency proceeding under this chapter;

(f) the commencement or continuation of an action or proceeding against a reinsurer of the insurer:

- (i) by the holder of a claim against the insurer; and
- (ii) seeking a reinsurance recovery that is contractually due to the insurer;
- (g) the commencement or continuation of an action or proceeding by a governmental unit to terminate or revoke an insurance license; and
- (h) (i) an action described in Subsection (3)(h)(ii):
 - (A) with respect to a contract, agreement, or lease including:
 - (I) a policy;
 - (II) an insurance or reinsurance contract;
 - (III) a surety bond; or
 - (IV) a surety undertaking;
 - (B) whether or not the insurer is a party to the contract, agreement, lease, policy, bond, or undertaking; and
 - (C) if the sole basis for the action is:
 - (I) that the insurer is the subject of a delinquency proceeding;
 - (II) that one or more of the insurer's licenses have been suspended or revoked because the insurer is the subject of a delinquency proceeding; or
 - (III) both Subsections (3)(h)(i)(C)(I) and (II); and
- (ii) as to a contract, agreement, lease, policy, bond, or undertaking described in Subsection (3)(h)(i), an action for:
 - (A) termination;
 - (B) failure to renew;
 - (C) suspension of performance;
 - (D) declaration of default;
 - (E) demand for additional, substitute, or replacement security or performance; or
 - (F) other adverse action.

(4) (a) Except as provided in Subsections (5) and (6) or as otherwise provided in this chapter, the commencement of a delinquency proceeding under this chapter operates as a stay, applicable to all persons, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding, including the enforcement of any judgment:

- (i) against an insured that is or could have been commenced before the commencement of the delinquency proceeding under this chapter; or
- (ii) (A) to recover a claim against the insured that arises before or after the commencement of the delinquency proceeding under this chapter; and
- (B) for which the insurer:
 - (I) is or may be liable under a policy of insurance; or
 - (II) is obligated to defend a party.

(b) Subject to Subsection (4)(c), the stay provided by this Subsection (4) terminates 90 days after the day on which the receiver is appointed unless extended by order of the receivership court:

- (i) for good cause shown; and
- (ii) after notice to any affected parties and any hearing the receivership court determines is appropriate.

(c) Notwithstanding the other provisions of this Subsection (4), any applicable statute of limitations with respect to any claim against an insured is tolled during the period of the stay provided by this Subsection (4) and any extensions.

(5) Notwithstanding Subsection (3), the commencement of a delinquency proceeding under this chapter does not operate as a stay or prohibition of:

(a) except as provided in Subsection (3)(g), a regulatory action by a commissioner of a nondomiciliary state, including the suspension of a license;

(b) a criminal action;

(c) an act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the act is accomplished within any relation back period under applicable law;

(d) a set off as permitted by Section 31A-27a-510;

(e) pursuit and enforcement of a nonmonetary governmental claim, judgment, or proceeding;

(f) (i) presentment of a negotiable instrument; and

(ii) the giving of notice of and protesting dishonor of the negotiable instrument;

(g) enforcement of a right against a single beneficiary trust established pursuant to and in compliance with Section 31A-17-404;

(h) under or in connection with a netting agreement or qualified financial contract as provided for in Section 31A-27a-611, a right to cause:

(i) the netting, liquidation, set off, termination, acceleration, or close out of an obligation; or

(ii) enforcement of a:

(A) security agreement;

(B) security arrangement; or

(C) other credit enhancement or guarantee or reimbursement obligation;

(i) discharge by an affected guaranty association of statutory responsibilities under any statute applicable to the affected guaranty association; or

(j) any of the following actions:

(i) an audit by a governmental unit to determine tax liability;

(ii) the issuance to the insurer by a governmental unit of a notice of tax deficiency;

(iii) a demand for a tax return; or

(iv) the making of an assessment for any tax and issuance of a notice and demand for payment of the assessment.

(6) Except as provided in Subsection (7):

(a) the stay of an act against property of the insurer under Subsection (3) continues until the property is no longer property of the receivership; and

(b) the stay of any other act under Subsection (3) continues until the earlier of the day on which the delinquency proceeding is closed or the day on which the delinquency proceeding is dismissed.

(7) (a) The receivership court may grant relief from a stay of Subsection (3) or (4), by terminating, annulling, modifying, or conditioning the stay:

(i) on request of a party in interest;

(ii) after notice and any hearing the receivership court determines appropriate; and

(iii) (A) for cause; or

(B) with respect to a stay of an act against property under Subsection (3) if:

(I) the insurer does not have any equity in the property; and

- (II) the property is not necessary to an effective plan.
- (b) For the purposes of this Subsection (7), "cause" includes if:
 - (i) the receiver cancels a policy, a surety bond, or a surety undertaking;
 - (ii) the creditor is entitled, by contract or law, to require the insured or the principal to have a policy, a surety bond, or a surety undertaking; and
 - (iii) the insured or the principal fails to obtain a replacement policy, surety bond, or surety undertaking within 30 days from the date of cancellation.
- (8) In a hearing under Subsection (7), the party seeking relief from the stay has the burden of proof on each issue, which shall be established by clear and convincing evidence.
- (9) (a) The estate of an insurer that is injured by a willful violation of a stay provided by this section is entitled to actual damages, including costs and attorney fees.
- (b) In appropriate circumstances, the receivership court may impose sanctions in addition to those under Subsection (9)(a).
- (10) Notwithstanding any other provision of law, in relation to any stay or injunction under this section, a bond may not be required of:
 - (a) the commissioner; or
 - (b) a receiver.

Enacted by Chapter 309, 2007 General Session

31A-27a-109. Statutes of limitations.

- (1) If applicable law, an order, or an agreement fixes a period within which the insurer may commence an action, and this period is not expired before the day on which the initial petition in a delinquency proceeding is filed, the receiver may not by reason of the filing of the initial petition in a delinquency proceeding be barred from commencing the action if the receiver commences the action on or before the later of:
 - (a) the end of the period, including any suspension of the period occurring on or after the day on which the initial petition in a delinquency proceeding is filed; or
 - (b) six years after the day on which the most recent receivership order is entered.
- (2) (a) Except as provided in Subsection (1), if applicable law, an order, or an agreement fixes a period within which the insurer may do an act described in Subsection (2)(b) and the period described in this Subsection (2)(a) is not expired before the date on which the initial petition in a delinquency proceeding is filed, the receiver may not by reason of the filing of the petition initiating a formal delinquency proceeding be barred from taking the act if the receiver does the act on or before the later of:
 - (i) the end of the period, including any suspension of the period occurring on or after the day on which the initial petition in a delinquency proceeding is filed; or
 - (ii) 60 days after the day on which the most recent receivership order is entered.
- (b) This Subsection (2) applies to:
 - (i) filing, curing, or performing:
 - (A) a pleading;
 - (B) a demand;
 - (C) a notice; or

- (D) a proof of claim or loss;
 - (ii) curing a default in a case or proceeding; or
 - (iii) performing any act similar to one described in Subsection (2)(b)(i) or (ii).
- (3) If applicable law, an order, or an agreement fixes a period for commencing or continuing a civil action in a court other than the receivership court on a claim against the insurer, and the period has not expired before the day on which the initial petition in a delinquency proceeding is filed, the period does not expire until the later of:
- (a) the end of the period, including any suspension of the period occurring on or after the day on which the initial petition in a delinquency proceeding is filed; or
 - (b) 30 days after the day on which the stay pursuant to this section with respect to the claim is terminated or expires.

Enacted by Chapter 309, 2007 General Session

31A-27a-110. Cooperation of officers, owners, and employees.

- (1) As used in this section:
 - (a) "Cooperate" includes to:
 - (i) reply promptly in writing to an inquiry from the commissioner or receiver requesting a reply; and
 - (ii) promptly make available to the commissioner or receiver any record, account, information, or property:
 - (A) of or pertaining to the insurer; and
 - (B) in the person's possession, custody, or control.
 - (b) "Person" includes a person who exercises control directly or indirectly over activities of the insurer through:
 - (i) a holding company; or
 - (ii) other affiliate of the insurer.
- (2) The following shall cooperate with the commissioner or receiver in a proceeding under this chapter or an investigation preliminary to a proceeding under this chapter:
 - (a) a present or former officer, manager, director, trustee, owner, or employee of an insurer;
 - (b) a present or former agent of an insurer; or
 - (c) a person with authority over or in charge of any segment of the insurer's affairs.
- (3) A person may not obstruct or interfere with the commissioner or receiver in the conduct of:
 - (a) a delinquency proceeding; or
 - (b) an investigation preliminary or incidental to a delinquency proceeding.
- (4) This section may not be construed to abridge otherwise existing legal rights, including the right to resist:
 - (a) a petition for liquidation or other delinquency proceeding; or
 - (b) other orders.
- (5) (a) A person described in Subsection (5)(b) is:
 - (i) guilty of a class B misdemeanor, except that the fine may exceed \$1,000 but may not exceed \$10,000; or

- (ii) after a hearing, subject to:
 - (A) the commissioner imposing a civil penalty that may not exceed \$10,000;
 - (B) the revocation or suspension of an insurance license issued by the commissioner; or
 - (C) a combination of Subsections (5)(a)(ii)(A) and (B).
- (b) This Subsection (5) applies to:
 - (i) a person described in Subsection (2) who fails to cooperate with the commissioner or receiver;
 - (ii) a person who obstructs or interferes with the commissioner or receiver in the conduct of a delinquency proceeding or an investigation preliminary or incidental to a delinquency proceeding; or
 - (iii) a person who violates an order validly issued under this chapter.

Enacted by Chapter 309, 2007 General Session

31A-27a-111. Actions by and against the receiver.

(1) (a) An allegation by the receiver of improper or fraudulent conduct against a person may not be the basis of a defense to the enforcement of a contractual obligation owed to the insurer by a third party.

(b) Notwithstanding Subsection (1)(a), a third party described in this Subsection (1) is not barred by this section from seeking to establish independently as a defense that the conduct is materially and substantially related to the contractual obligation for which enforcement is sought.

(2) (a) Subject to Subsection (2)(b), a prior wrongful or negligent action of any present or former officer, manager, director, trustee, owner, employee, or agent of the insurer may not be asserted as a defense to a claim by the receiver:

- (i) under a theory of:
 - (A) estoppel;
 - (B) comparative fault;
 - (C) intervening cause;
 - (D) proximate cause;
 - (E) reliance; or
 - (F) mitigation of damages; or
- (ii) otherwise.

(b) Notwithstanding Subsection (2)(a):

(i) the affirmative defense of fraud in the inducement may be asserted against the receiver in a claim based on a contract; and

(ii) a principal under a surety bond or a surety undertaking is entitled to credit against any reimbursement obligation to the receiver for the value of any property pledged to secure the reimbursement obligation to the extent that:

- (A) the receiver has possession or control of the property; or
- (B) the insurer or its agents misappropriated, including commingling, the property.

(c) Evidence of fraud in the inducement is admissible only if it is contained in the records of the insurer.

(3) Action or inaction by an insurance regulatory authority may not be asserted

as a defense to a claim by the receiver.

(4) (a) Subject to Subsection (4)(b), a judgment or order entered against an insured or the insurer in contravention of a stay or injunction under this chapter, or at any time by default or collusion, may not be considered as evidence of liability or of the quantum of damages in adjudicating claims filed in the estate arising out of the subject matter of the judgment or order.

(b) Subsection (4)(a) does not apply to an affected guaranty association's claim for amounts paid on a settlement or judgment in pursuit of the affected guaranty association's statutory obligations.

(5) The receiver may not be considered a governmental entity for the purposes of any state law awarding fees to a litigant who prevails against a governmental entity.

Enacted by Chapter 309, 2007 General Session

31A-27a-112. Unrecorded obligations and defenses of affiliates.

(1) This section applies to a person who in relation to an insurer is:

- (a) an affiliate;
- (b) a controlled or controlling person; or
- (c) a present or former officer, manager, director, trustee, or shareholder.

(2) In a proceeding or claim by the receiver, a person described in Subsection (1) may not assert a defense unless evidence of the defense:

(a) is recorded in the records of the insurer at or about the time the event giving rise to the defense occurs; and

(b) if required by statutory accounting practices and procedures, is timely reported on the insurer's official financial statements filed with the commissioner.

(3) A person described in Subsection (1) may not assert a claim, unless the obligation:

(a) is recorded in the records of the insurer at or about the time the obligation is incurred; and

(b) if required by statutory accounting practices and procedures, is timely reported on the insurer's official financial statements filed with the commissioner.

(4) A claim by the receiver against a person described in Subsection (1) that is made on the basis of an unrecorded or unreported transaction is not barred by this section.

Enacted by Chapter 309, 2007 General Session

31A-27a-113. Executory contracts.

(1) Subject to the other provisions of this section, the receiver may assume or reject an executory contract or unexpired lease of the insurer.

(2) (a) If there is a default in an executory contract or unexpired lease of the insurer, the receiver may not assume the contract or lease unless, at the time of the assumption of the contract or lease, the receiver:

(i) cures or provides adequate assurance that the receiver will promptly cure the default; and

(ii) provides adequate assurance of future performance under the contract or

lease.

(b) This Subsection (2) does not apply to a default that is a breach of a provision relating to:

(i) the insolvency or financial condition of the insurer at any time before the closing of the delinquency proceeding;

(ii) the appointment of or taking possession by:

(A) a receiver in a case under this chapter; or

(B) a custodian before the commencement of the delinquency proceeding; or

(iii) the satisfaction of a penalty rate or provision relating to a default arising from a failure of the insurer to perform a nonmonetary obligation under the executory contract or unexpired lease.

(3) A claim arising from a rejection under this section or under a plan of rehabilitation or liquidation of an executory contract or unexpired lease of the insurer that is not assumed shall be determined, and shall be treated and classified as though the claim arose before the day on which a successful petition commencing the delinquency proceeding is filed.

Enacted by Chapter 309, 2007 General Session

31A-27a-114. Immunity and indemnification.

(1) For purposes of this section:

(a) "Receiver's assistant" includes:

(i) a present or former special deputy or assistant special deputy engaged by contract or otherwise;

(ii) a person whom the receiver, a special deputy, or an assistant special deputy employs to assist in a delinquency proceeding under this chapter; and

(iii) a state employee acting with respect to a delinquency proceeding under this chapter.

(b) "Receiver's contractor" includes a person with whom the receiver, a special deputy, or an assistant special deputy contracts to assist in a delinquency proceeding under this chapter such as:

(i) an attorney;

(ii) an accountant;

(iii) an auditor;

(iv) an actuary;

(v) an investment banker;

(vi) a financial advisor;

(vii) any other professional or firm who is retained or contracted with by the receiver as an independent contractor; and

(viii) an employee of a person described in this Subsection (1)(b).

(2) For the purposes of this section, the following persons are entitled to immunity and indemnification, or only immunity, as applicable:

(a) a present or former receiver responsible for the conduct of a delinquency proceeding under this chapter;

(b) a present or former receiver's assistant; and

(c) a present or former receiver's contractor.

(3) The receiver, a receiver's assistant, and a receiver's contractor have immunity under this chapter, as follows:

(a) the receiver, a receiver's assistant, and a receiver's contractor have official immunity and are immune from suit and liability, both personally and in their official capacities, for any claim for damage to or loss of property, personal injury, or other civil liability caused by or resulting from an alleged act, error, or omission of the receiver, a receiver's assistant, or a receiver's contractor arising out of or by reason of the receiver's, receiver's assistant's, or receiver's contractor's duties or employment;

(b) the receiver, a receiver's assistant, and a receiver's contractor have absolute judicial immunity and are immune from suit and liability, both personally and in their official capacities, for any claim for damage to or loss of property, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver, a receiver's assistant, or a receiver's contractor arising out of or by reason of any matter that is subject to review by the receivership court after notice and opportunity to be heard, if the alleged act, error, or omission is not disapproved or disallowed by the receivership court; and

(c) this chapter may not be construed to provide official immunity, to provide judicial immunity, or to otherwise hold the receiver, a receiver's assistant, or a receiver's contractor immune from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the receiver, a receiver's assistant, or a receiver's contractor.

(4) The receiver or a receiver's assistant is entitled to indemnification under this chapter, as follows:

(a) the receiver and a receiver's assistant shall be indemnified from the assets of the insurer:

(i) if any legal action is commenced against the receiver or a receiver's assistant:

(A) whether against the receiver or receiver's assistant personally or in the official capacity; and

(B) alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the receiver or a receiver's assistant arising out of or by reason of the receiver's or receiver's assistant's duties or employment;

(ii) for all expenses, attorney fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action; and

(iii) unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the receiver or receiver's assistant giving rise to the claim:

(A) does not arise out of or by reason of the receiver's or receiver's assistant's duties or employment; or

(B) is caused by intentional or willful and wanton misconduct;

(b) attorney fees and related expenses incurred in defending a legal action for which immunity or indemnity is available under this section shall be paid from the assets of the insurer as they are incurred, in advance of the final disposition of the action upon receipt of an agreement by or on behalf of the receiver or receiver's

assistant to repay the attorney fees and expenses if it is ultimately determined upon a final adjudication on the merits that the receiver or receiver's assistant is not entitled to immunity or indemnity under this section;

(c) the following paid pursuant to this section are an administrative expense of the insurer, an indemnification for:

- (i) an expense payment;
- (ii) a judgment;
- (iii) a settlement;
- (iv) a decree;
- (v) attorney fees;
- (vi) a surety bond premium; or
- (vii) other amounts paid or to be paid from the insurer's assets pursuant to this

section;

(d) in the event of actual or threatened litigation against a receiver or a receiver's assistant for which immunity or indemnity may be available under this section, a reasonable amount of funds which in the judgment of the receiver may be needed to provide immunity or indemnity shall be segregated and reserved from the assets of the insurer:

- (i) as security for the payment of indemnity; and
- (ii) until:

(A) all applicable statutes of limitations run;

(B) all actual or threatened actions against the receiver or a receiver's assistant are completely and finally resolved; and

(C) all obligations under this section are satisfied;

(e) in lieu of segregation and reserving of funds, the receiver may, in the receiver's discretion, obtain a surety bond or make other arrangements that will enable the receiver to fully secure the payment of all obligations under this section;

(f) if a legal action against a receiver's assistant for which indemnity may be available under this section is settled before final adjudication on the merits, the receiver shall pay the settlement amount on behalf of the receiver's assistant, or indemnify the receiver's assistant for the settlement amount, unless the receiver determines that the claim:

(i) does not arise out of or by reason of the receiver's assistant's duties or employment; or

(ii) is caused by the intentional or willful and wanton misconduct of the receiver's assistant; and

(g) in a legal action in which a claim is asserted against the receiver:

(i) that portion of any settlement relating to the alleged act, error, or omission of the receiver is subject to the approval of the receivership court; and

(ii) the receivership court may not approve that portion of the settlement if the receivership court determines that the claim:

(A) does not arise out of or by reason of the receiver's duties or employment; or

(B) is caused by the intentional or willful and wanton misconduct of the receiver.

(5) Nothing contained or implied in this section shall operate, or be construed or applied to deprive the receiver, a receiver's assistant, or a receiver's contractor of any immunity, indemnity, benefits of law, rights, or any defense otherwise available.

(6) The immunity and indemnification provided to a receiver's assistant and the immunity provided to a receiver's contractor under this section does not apply to an action by the receiver against the receiver's assistant or receiver's contractor.

(7) (a) Subsection (3) applies to any suit based in whole or in part on an alleged act, error, or omission that takes place on or after April 30, 2007.

(b) A legal action may not lie against the receiver or a receiver's assistant based in whole or in part on an alleged act, error, or omission that takes place before April 30, 2007, unless suit is filed and valid service of process is obtained on or after April 30, 2007, but on or before April 30, 2008.

(8) Subsection (4) applies to a suit that is pending on or filed after April 30, 2007, without regard to when the alleged act, error, or omission takes place.

Enacted by Chapter 309, 2007 General Session

31A-27a-115. Approval and payment of expenses.

(1) The receiver may pay an expense under a contract, lease, employment agreement, or other arrangement entered into by the insurer before receivership, as the receiver considers necessary for the purposes of this chapter. The receiver:

(a) is not required to pay an expense described in this Subsection (1) that the receiver determines is not necessary; and

(b) may reject a contract pursuant to Section 31A-27a-113.

(2) Receivership expenses other than those described in Subsection (1) shall be paid as follows:

(a) unless the court orders otherwise in the rehabilitation or liquidation order, the receiver may submit a motion pursuant to Section 31A-27a-107 to the receivership court to approve:

(i) the terms of compensation of each special deputy or contractor; or

(ii) any other expense in excess of an amount established by this chapter;

(b) the receiver may, as the receiver considers appropriate, submit a motion to approve any other compensation, anticipated expense, or incurred expense not described in Subsection (2)(a);

(c) the receiver may pay as incurred:

(i) an expense not requiring receivership court approval; and

(ii) an expense approved in the rehabilitation or liquidation order; and

(d) the approval of an expense by the receivership court may not prejudice the right of the receiver to seek recovery, recoupment, disgorgement, or reimbursement of a fee based on contract or a cause of action recognized in law or in equity.

(3) On an annual or more frequent basis, the receiver shall submit to the receivership court a report summarizing the expenses incurred in the prior period.

(4) Receivership court approval is not required to pay expenses incurred by the receiver in connection with the appeal of an order of the receivership court.

(5) All expenses of receivership shall be paid from the assets of the insurer, except as provided in this Subsection (5).

(a) If the property of the insurer does not contain sufficient cash or liquid assets to defray the expenses incurred, the commissioner may advance funds from the account established under Subsection 31A-27a-705(3).

(b) An amount advanced shall be repaid to the account out of the first available money of the insurer.

Enacted by Chapter 309, 2007 General Session

31A-27a-116. Financial reporting.

(1) (a) The receiver shall comply with all requirements for receivership financial reporting as specified by the commissioner by rule within:

(i) 180 days after the day on which the receivership court enters an order of receivership; and

(ii) 45 days following each calendar quarter after the period specified in Subsection (1)(a)(i).

(b) The rule described in this Subsection (1) shall:

(i) comply with this section;

(ii) be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(iii) require the receiver to file any financial report with the receivership court in addition to any other person specified in the rule.

(c) A financial report shall include, at a minimum, a statement of:

(i) the assets and liabilities of the insurer;

(ii) the changes in those assets and liabilities; and

(iii) all funds received or disbursed by the receiver during that reporting period.

(d) The receiver may qualify a financial report or provide notes to the financial statement for further explanation.

(e) The receivership court may order the receiver to provide any additional information as the receivership court considers appropriate.

(2) Each affected guaranty association shall file one or more reports with the liquidator:

(a) (i) within 180 days after the day on which the receivership court enters an order of liquidation; and

(ii) (A) within 45 days following each calendar quarter after the period described in Subsection (2)(a)(i); or

(B) at an interval:

(I) agreed to between the liquidator and the affected guaranty association; or

(II) required by the receivership court; and

(b) in no event less than annually.

(3) For good cause shown, the receivership court may grant:

(a) relief for an extension or modification of time to comply with Subsection (1) or (2); or

(b) such other relief as may be appropriate.

Amended by Chapter 382, 2008 General Session

31A-27a-117. Records.

(1) (a) Upon entry of an order of rehabilitation or liquidation, the receiver is vested with title to all of the records of the insurer:

- (i) of whatever nature;
 - (ii) in whatever medium;
 - (iii) wherever located; and
 - (iv) regardless of whether the item is in the custody and control of:
 - (A) a third party administrator;
 - (B) a managing general agent;
 - (C) an attorney; or
 - (D) other representatives of the insurer.
 - (b) The receiver may immediately take possession and control of:
 - (i) all of the records of the insurer; and
 - (ii) the premises where the records are located.
 - (c) At the request of the receiver, a third party administrator, managing general agent, attorney, or other representatives of the insurer shall release all records of the insurer to:
 - (i) the receiver; or
 - (ii) the receiver's designee.
 - (d) With the receiver's approval, an affected guaranty association with an obligation under a policy issued by the insurer may take actions necessary to obtain directly from a third party administrator, managing general agent, attorney, or other representative of the insurer all records pertaining to the insurer's business that are appropriate or necessary for the affected guaranty association to fulfill its statutory obligations.
- (2) The receiver may certify a record of a delinquent insurer described in Subsection (1) and a record of the receiver's office created and maintained in connection with a delinquent insurer, as follows:
- (a) a record of a delinquent insurer may be certified by the receiver in an affidavit stating that the record is a true and correct copy of the record of the insurer that is received from the custody of the insurer, or found among the insurer's effects; or
 - (b) a record created by or filed with the receiver's office in connection with a delinquent insurer may be certified by the receiver's affidavit stating that the record is a true and correct copy of the record maintained by the receiver's office.
- (3) (a) An original record or copy of a record certified under Subsection (2):
- (i) when admitted in evidence is prima facie evidence of the facts disclosed; and
 - (ii) is admissible in evidence in the same manner as a document described in Utah Rules of Evidence, Rule 902(1).
- (b) The receivership court may consider the certification of a record by the receiver pursuant to this section as satisfying the requirements of Utah Rules of Evidence, Rule 803(6).
- (4) A record of a delinquent insurer held by the receiver:
- (a) is not a record of the department for any purposes; and
 - (b) not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 382, 2008 General Session

31A-27a-118. Commissioner's reports.

- (1) The commissioner shall include in the commissioner's annual report:
 - (a) the names of the insurers proceeded against under Sections 31A-27a-207 and 31A-27a-901;
 - (b) those facts which indicate in reasonable detail the commissioner's formal proceedings under this chapter; and
 - (c) those facts which generally explain the use and effectiveness of proceedings under Chapter 27, Part 5, Administrative Actions, and Section 31A-27a-901.
- (2) The commissioner as receiver shall make and file annual reports and any other required reports for an insurer proceeded against under Sections 31A-27a-207 and 31A-27a-901 in the manner, in the form, and within the time required by law of an insurer authorized to do business in this state.

Renumbered and Amended by Chapter 309, 2007 General Session

31A-27a-119. Delinquency proceeding commenced before April 30, 2007.

This chapter does not apply to a delinquency proceeding ongoing on April 30, 2007.

Enacted by Chapter 309, 2007 General Session

31A-27a-120. Severability.

If any provision of this chapter or the application of this chapter to any person or circumstance is for any reason held invalid, the remainder of the chapter and the application of the provision to other persons or circumstances shall be given effect without the invalid provision or application. The provisions of this chapter are severable.

Enacted by Chapter 309, 2007 General Session

31A-27a-201. Receivership court's seizure order.

- (1) The commissioner may file in the Third District Court for Salt Lake County a petition:
 - (a) with respect to:
 - (i) an insurer domiciled in this state;
 - (ii) an unauthorized insurer; or
 - (iii) pursuant to Section 31A-27a-901, a foreign insurer;
 - (b) alleging that:
 - (i) there exists grounds that would justify a court order for a formal delinquency proceeding against the insurer under this chapter; and
 - (ii) the interests of policyholders, creditors, or the public will be endangered by delay; and
 - (c) setting forth the contents of a seizure order considered necessary by the commissioner.
- (2) (a) Upon a filing under Subsection (1), the receivership court may issue the requested seizure order:
 - (i) immediately, ex parte, and without notice or hearing;

(ii) that directs the commissioner to take possession and control of:

- (A) all or a part of the property, accounts, and records of an insurer; and
- (B) the premises occupied by the insurer for transaction of the insurer's business; and

(iii) that until further order of the receivership court, enjoins the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.

(b) A person having possession or control of and refusing to deliver any of the records or assets of a person against whom a seizure order is issued under this Subsection (2) is guilty of a class B misdemeanor.

(3) (a) A petition that requests injunctive relief:

- (i) shall be verified by the commissioner or the commissioner's designee; and
- (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

(b) The commissioner shall provide only the notice that the receivership court may require.

(4) (a) The receivership court shall specify in the seizure order the duration of the seizure, which shall be the time the receivership court considers necessary for the commissioner to ascertain the condition of the insurer.

(b) The receivership court may from time to time:

- (i) hold a hearing that the receivership court considers desirable:
 - (A) (I) on motion of the commissioner;
 - (II) on motion of the insurer; or
 - (III) on its own motion; and
- (B) after the notice the receivership court considers appropriate; and
- (ii) extend, shorten, or modify the terms of the seizure order.

(c) The receivership court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to commence a formal proceeding under this chapter.

(d) An order of the receivership court pursuant to a formal proceeding under this chapter vacates the seizure order.

(5) Entry of a seizure order under this section does not constitute a breach or an anticipatory breach of a contract of the insurer.

(6) (a) An insurer subject to an ex parte seizure order under this section may petition the receivership court at any time after the issuance of a seizure order for a hearing and review of the basis for the seizure order.

(b) The receivership court shall hold the hearing and review requested under this Subsection (6) not more than 15 days after the day on which the request is received or as soon thereafter as the court may allow.

(c) A hearing under this Subsection (6):

- (i) may be held privately in chambers; and
- (ii) shall be held privately in chambers if the insurer proceeded against requests that it be private.

(7) (a) If, at any time after the issuance of a seizure order, it appears to the receivership court that a person whose interest is or will be substantially affected by the seizure order did not appear at the hearing and has not been served, the receivership

court may order that notice be given to the person.

(b) An order under this Subsection (7) that notice be given may not stay the effect of a seizure order previously issued by the receivership court.

(8) Whenever the commissioner makes a seizure as provided in Subsection (2), on the demand of the commissioner, it shall be the duty of the sheriff of a county of this state, and of the police department of a municipality in the state to furnish the commissioner with necessary deputies or officers to assist the commissioner in making and enforcing the seizure order.

(9) The commissioner may appoint a receiver under this section. The insurer shall pay the costs and expenses of the receiver appointed.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

31A-27a-202. Commencement of formal delinquency proceeding.

(1) A formal delinquency proceeding against a person shall be commenced by filing a petition in the name of the commissioner or department.

(2) (a) The petition required by Subsection (1):

(i) shall state:

(A) the grounds upon which the proceeding is based; and

(B) the relief requested; and

(ii) may include a request for restraining orders and injunctive relief as described in Section 31A-27a-108.

(b) Upon the filing of a petition, the commissioner shall forward a notice of the petition by first-class mail or electronic communication, as permitted by the receivership court, to the commissioners and guaranty associations in states in which the insurer did business.

(3) (a) A petition that requests injunctive relief:

(i) shall be verified by the commissioner or the commissioner's designee; and

(ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

(b) The commissioner shall provide only the notice the receivership court requires.

(4) If a temporary restraining order is requested:

(a) the receivership court may issue an initial order containing the relief requested;

(b) the order shall state the time and date of its issuance;

(c) the receivership court shall set a time and date for the return of summons:

(i) not more than 10 days from the time and date the initial order is issued; and

(ii) at which time the person proceeded against may appear before the receivership court for a summary hearing; and

(d) the order may not continue in effect beyond the time and date set for the return of summons, unless the receivership court expressly enters one or more orders extending the restraining order.

(5) (a) If no temporary restraining order is requested, the receivership court shall cause summons to be issued.

- (b) The summons shall specify:
 - (i) a return date not more than 30 days after the day on which the summons is issued; and
 - (ii) that an answer shall be filed at or before the return date.

Amended by Chapter 297, 2011 General Session

31A-27a-203. Return of summons and summary hearing.

(1) The receivership court shall hold a summary hearing at the time and date for the return of summons on a petition to commence a formal delinquency proceeding.

(2) If a person is not served with summons on a petition to commence a formal delinquency proceeding and fails to appear for the summary hearing, the receivership court shall:

- (a) continue the summary hearing not more than 10 days;
- (b) provide for alternative service of summons upon the person; and
- (c) extend any restraining order.

(3) Upon a showing of good faith efforts to effect personal service upon a person who fails to appear for a continued summary hearing, the receivership court shall order notice of the petition to commence a formal delinquency proceeding to be published. The order and notice shall specify:

(a) a return date not less than 10 nor more than 20 days after the day on which notice is published; and

(b) that the restraining order is extended to the continued hearing date.

(4) If a person fails to appear for a summary hearing on a petition to commence a formal delinquency proceeding after service of summons, the receivership court shall enter judgment in favor of the commissioner against that person.

(5) (a) A person who appears for the summary hearing on a petition to commence a formal delinquency proceeding shall file its answer at the hearing and the receivership court shall:

(i) determine whether to extend any temporary restraining order pending final judgment; and

(ii) set the case for trial on a date not more than 10 days from the day on which the summary hearing is held.

(b) The receivership court may not grant a continuance for filing an answer.

Enacted by Chapter 309, 2007 General Session

31A-27a-204. Proceedings for expedited trial -- Continuance -- Evidence -- Discovery.

(1) (a) The receivership court shall proceed to hear the case on the petition to commence a formal delinquency proceeding:

- (i) at the time and date set forth for trial;
- (ii) without a jury; and
- (iii) without unnecessary delay.

(b) To the extent practicable, the receivership court shall give precedence to the matter over all other matters.

(c) To the extent authorized by law, the receivership court may assign the matter to another judge if necessary to comply with the need for expedited proceedings under this chapter.

(2) A continuance for trial shall be granted only in extreme circumstances.

(3) The receivership court shall admit as self authenticated a certified copy of the following when offered by the commissioner:

(a) a financial statement made by the insurer or an affiliate;

(b) an examination report of the insurer or an affiliate made by or on behalf of the commissioner; or

(c) any other document filed with any insurance department by the insurer or an affiliate.

(4) The facts contained in an examination report of the insurer or an affiliate made by or on behalf of the commissioner is presumed to be true as of the date of the hearing if the examination is made as of a date not more than 270 days before the day on which the petition is filed. The presumption:

(a) is rebuttable; and

(b) shifts the burden of production and persuasion to the insurer.

(5) Discovery:

(a) is limited to grounds alleged in the petition; and

(b) shall be concluded on an expedited basis.

Enacted by Chapter 309, 2007 General Session

31A-27a-205. Decision and appeals.

(1) The receivership court shall enter judgment on the petition to commence formal delinquency proceeding within 15 days after the day on which the evidence is concluded.

(2) (a) An order entered pursuant to Subsection (1) is final when entered.

(b) An appeal shall be:

(i) handled on an expedited basis; and

(ii) taken within five days of the day on which judgment is entered.

(3) (a) Absent entry of an order staying the order pursuant to Subsection (4), the order has full force and effect and the receiver shall carry out the order's terms and this chapter.

(b) A request for reconsideration, review, or appeal, or posting of a bond, may not dissolve or stay the judgment.

(4) (a) The following motions shall first be presented to the receivership court:

(i) a motion for a stay of a judgment;

(ii) a motion for approval of a supersedes bond; or

(iii) a motion for other relief pending appeal.

(b) Except for a grant of a petition for rehabilitation which shall remain in effect pending a decision on appeal, during the pendency of an appeal the receivership court may do any of the following in accordance with the Utah Rules of Civil Procedure:

(i) suspend an order entered under Subsection (1);

(ii) modify an order entered under Subsection (1); or

(iii) make any other appropriate order governing the enforceability of an order

entered under Subsection (1).

(c) The receivership court or an appellate court to which the matter is presented may condition any relief it grants under this Subsection (4) on the filing of a bond or other appropriate security with the receivership court.

(5) Section 31A-27a-114 applies to all acts taken during the pendency of an appeal regardless of the appeal's ultimate disposition.

(6) The reversal or modification on appeal of an order of rehabilitation or liquidation does not affect the validity of an act of the receiver pursuant to the order unless the order is stayed pending appeal.

Amended by Chapter 297, 2011 General Session

31A-27a-206. Confidentiality.

(1) (a) Except as provided in Subsection (1)(b), in a delinquency proceeding or a judicial review under Section 31A-27a-201:

(i) all records of the insurer, department files, court records and papers, and other documents, so far as they pertain to or are a part of the record of the proceedings, are confidential; and

(ii) a paper filed with the clerk of the Third District Court for Salt Lake County shall be held by the clerk in a confidential file as permitted by law.

(b) The items listed in Subsection (1)(a) are subject to Subsection (1)(a):

(i) except to the extent necessary to obtain compliance with an order entered in connection with the proceeding; and

(ii) unless and until:

(A) the Third District Court for Salt Lake County, after hearing argument in chambers, orders otherwise;

(B) the insurer requests that the matter be made public; or

(C) the commissioner applies for an order under Section 31A-27a-207.

(2) (a) If the recipient agrees to maintain the confidentiality of the document, material, or other information, the commissioner or rehabilitator may share a document, materials, or other information in the possession, custody, or control of the department, pertaining to an insurer that is the subject of a delinquency proceeding under this chapter with:

(i) another state, federal, and international regulatory agency;

(ii) the National Association of Insurance Commissioners and its affiliates or subsidiaries;

(iii) a state, federal, and international law enforcement authority;

(iv) an auditor appointed by the receivership court in accordance with Section 31A-27a-805; or

(v) a representative of an affected guaranty association.

(b) If the domiciliary receiver believes that certain information is sensitive, the receiver may share that information subject to a continuation of the confidentiality obligations beyond the period allowed in Subsection (3).

(c) This section does not limit the power of the commissioner to disclose information under other applicable law.

(3) (a) A domiciliary receiver shall permit a commissioner or a guaranty

association of another state to obtain a listing of policyholders and certificate holders residing in the requestor's state, including current addresses and summary policy information, if the commissioner or the guaranty association of another state agrees:

- (i) to maintain the confidentiality of the record; and
- (ii) that the record will be used only for regulatory or guaranty association purposes.

(b) Access to a record under this Subsection (3) may be limited to normal business hours.

(c) If the domiciliary receiver believes that certain information described in this Subsection (3) is sensitive and disclosure might cause a diminution in recovery, the receiver may apply for a protective order imposing additional restrictions on access.

(4) (a) The confidentiality obligations imposed by this section shall end upon the entry of an order of liquidation against the insurer, unless:

- (i) otherwise agreed to by the parties; or
- (ii) pursuant to an order of the receivership court.

(b) A continuation of confidentiality as provided in Subsection (2) does not apply to an insurer record necessary for a guaranty association to discharge its statutory responsibilities.

(5) A waiver of an applicable privilege or claim of confidentiality does not occur as a result of a disclosure, or any sharing of documents, materials, or other information, made pursuant to this section.

Enacted by Chapter 309, 2007 General Session

31A-27a-207. Grounds for rehabilitation or liquidation.

(1) The commissioner may file in the Third District Court for Salt Lake County a petition with respect to an insurer domiciled in this state or an unauthorized insurer for an order of rehabilitation or liquidation on any one or more of the following grounds:

- (a) the insurer is impaired;
- (b) the insurer is insolvent;
- (c) subject to Subsection (2), the insurer is about to become insolvent;
- (d) (i) the insurer neglects or refuses to comply with an order of the commissioner to make good within the time prescribed by law any deficiency;
- (ii) if a stock company, if its capital and minimum required surplus is impaired; or
- (iii) if a company other than a stock company, if its surplus is impaired;
- (e) the insurer, its parent company, its subsidiary, or its affiliate:
 - (i) converts, wastes, or conceals property of the insurer; or
 - (ii) otherwise improperly disposes of, dissipates, uses, releases, transfers, sells, assigns, hypothecates, or removes the property of the insurer;
- (f) the insurer is in such condition that the insurer could not meet the requirements for organization and authorization as required by law, except as to the amount of:
 - (i) the original surplus required of a stock company under Sections 31A-5-211 and 31A-8-209; and
 - (ii) the surplus required of a company other than a stock company in excess of the minimum surplus required to be maintained;

- (g) the insurer, its parent company, its subsidiary, or its affiliate:
 - (i) conceals, removes, alters, destroys, or fails to establish and maintain records and other pertinent material adequate for the determination of the financial condition of the insurer by examination under Section 31A-2-203; or
 - (ii) fails to properly administer claims or maintain claims records that are adequate for the determination of its outstanding claims liability;
- (h) at any time after the issuance of an order under Subsection 31A-2-201(4), or at the time of instituting a proceeding under this chapter, it appears to the commissioner that upon good cause shown, it is not in the best interest of the policyholders, creditors, or the public to proceed with the conduct of the business of the insurer;
- (i) the insurer is in such condition that the further transaction of business would be hazardous financially, according to Subsection 31A-17-609(3) or otherwise, to its policyholders, creditors, or the public;
 - (j) there is reasonable cause to believe that:
 - (i) there has been:
 - (A) embezzlement from the insurer;
 - (B) wrongful sequestration or diversion of the insurer's property;
 - (C) forgery or fraud affecting the insurer; or
 - (D) other illegal conduct in, by, or with respect to the insurer; and
 - (ii) the act described in Subsection (1)(j)(i) if established would endanger assets in an amount threatening the solvency of the insurer;
 - (k) control of the insurer is in a person who is:
 - (i) dishonest;
 - (ii) untrustworthy; or
 - (iii) so lacking in insurance company managerial experience or capability as to be hazardous to policyholders, creditors, or the public;
 - (l) if:
 - (i) a person who in fact has executive authority in the insurer, whether an officer, manager, general agent, director, trustee, employee, shareholder, or other person:
 - (A) refuses to be examined under oath by the commissioner concerning the insurer's affairs, whether in this state or elsewhere; or
 - (B) if examined under oath, refuses to divulge pertinent information reasonably known to the person; and
 - (ii) after reasonable notice of the facts described in Subsection (1)(l)(i), the insurer fails promptly and effectively to terminate:
 - (A) the employment or status of the person; and
 - (B) all of the person's influence on management;
 - (m) after demand by the commissioner under Section 31A-2-203 or under this chapter, the insurer fails to promptly make available for examination:
 - (i) any of its own property, accounts, or records; or
 - (ii) so far as it pertains to the insurer, property, accounts, or records of:
 - (A) a subsidiary or related company within the control of the insurer; or
 - (B) a person having executive authority in the insurer;
 - (n) without first obtaining the written consent of the commissioner, the insurer:
 - (i) transfers, or attempts to transfer, in a manner contrary to Section 31A-5-508 or 31A-16-103, substantially its entire property or business; or

(ii) enters into a transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person;

(o) the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state;

(p) within the previous five years the insurer willfully and continuously violates:

(i) its charter or articles of incorporation;

(ii) its bylaws;

(iii) an insurance law of this state; or

(iv) a valid order of the commissioner;

(q) the insurer fails to pay within 60 days after the due date:

(i) (A) an obligation to any state or any subdivision of a state; or

(B) a judgment entered in any state, if the court in which the judgment is entered has jurisdiction over the subject matter; and

(ii) except that nonpayment is not a ground until 60 days after a good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts;

(r) the insurer systematically:

(i) engages in the practice of:

(A) reaching settlements with and obtaining releases from claimants; and

(B) unreasonably delaying payment, or failing to pay the agreed-upon settlements; or

(ii) attempts to compromise with claimants or other creditors on the ground that it is financially unable to pay its claims or obligations in full;

(s) the insurer fails to file its annual report or other financial report required by statute within the time allowed by law;

(t) the board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities specified in Section 31A-27a-104, request or consent to rehabilitation or liquidation under this chapter;

(u) (i) the insurer does not comply with its domiciliary state's requirements for issuance to it of a certificate of authority; or

(ii) the insurer's certificate of authority is revoked by its state of domicile; or

(v) when authorized by Chapter 17, Part 6, Risk-Based Capital.

(2) For purposes of this section, an insurer is about to become insolvent if it is reasonably anticipated that the insurer will not have liquid assets to meet its current obligations for the next 90 days.

Enacted by Chapter 309, 2007 General Session

31A-27a-208. Entry of order.

(1) If the commissioner establishes any of the grounds provided in Section 31A-27a-207, the receivership court shall:

(a) grant the petition; and

- (b) issue the order of rehabilitation or liquidation requested in the petition.
- (2) Upon the issuance of the order, the commissioner shall forward a copy of the order by first-class mail or electronic communication as permitted by the receivership court to the commissioners and guaranty associations in states in which the insurer did business.

Enacted by Chapter 309, 2007 General Session

31A-27a-209. Effect of order of rehabilitation or liquidation.

(1) The filing or recording of an order of receivership with the following imparts the same notice as a deed, bill of sale, or other evidence of title filed or recorded would have imparted:

- (a) the Third District Court for Salt Lake County;
- (b) the recorder of deeds of the county in which the principal business of the insurer is conducted; or
- (c) in the case of real estate, with the recorder of deeds of the county where the property is located.

(2) The filing of a petition commencing delinquency proceedings under this chapter or the entry of an order of seizure, rehabilitation, or liquidation does not constitute a breach or an anticipatory breach of any contract or lease of the insurer.

(3) (a) The receiver may appoint one or more special deputies.

(b) A special deputy:

(i) has the powers and responsibilities of the receiver granted under this section, unless specifically limited by the receiver; and

(ii) serves at the pleasure of the receiver.

(c) The receiver may employ or contract with:

(i) legal counsel;

(ii) one or more actuaries;

(iii) one or more accountants;

(iv) one or more appraisers;

(v) one or more consultants;

(vi) one or more clerks;

(vii) one or more assistants; and

(viii) other personnel as may be considered necessary.

(d) A special deputy or other person with whom the receiver contracts under this Subsection (3):

(i) is considered to be an agent of the commissioner only in the commissioner's capacity as receiver; and

(ii) is not considered an agent of the state.

(e) The provisions of any law governing the procurement of goods and services by the state do not apply to a contract entered into by the commissioner as receiver.

(f) The compensation of a special deputy, employee, or contractor and all expenses of taking possession of the insurer and of conducting the receivership shall be:

(i) determined by the receiver, with the approval of the receivership court in accordance with Section 31A-27a-115; and

- (ii) paid out of the property of the insurer.
- (g) (i) If the receiver, in the receiver's sole discretion, considers it necessary to the proper performance of the receiver's duties under this chapter, the receiver may appoint an advisory committee of policyholders, claimants, or other creditors including guaranty associations.
 - (ii) The committee described in this Subsection (3)(g) serves:
 - (A) at the pleasure of the receiver; and
 - (B) without compensation and without reimbursement for expenses.
 - (iii) The receiver or the receivership court in proceedings conducted under this chapter may not appoint any other committee of any nature.

Enacted by Chapter 309, 2007 General Session

31A-27a-301. Rehabilitation orders.

- (1) (a) An order to rehabilitate the business of an insurer shall:
 - (i) appoint the commissioner and the commissioner's successors in office as the rehabilitator;
 - (ii) direct the rehabilitator to:
 - (A) take possession and title of the assets of the insurer; and
 - (B) administer the assets of the insurer under the general supervision of the court; and
 - (iii) require accountings to the receivership court by the rehabilitator.
- (b) Accountings shall be at the intervals the receivership court specifies in its order, but no less frequently than semiannually.
- (c) Each accounting shall include a report concerning the rehabilitator's opinion as to:
 - (i) the likelihood that a plan under Section 31A-27a-303 will be prepared by the rehabilitator; and
 - (ii) the timetable for preparing the plan described in Subsection (1)(c)(i).
- (2) (a) In recognition of the need for a prompt and final resolution for all persons affected by a plan of rehabilitation, any appeal from an order of rehabilitation or an order approving a plan of rehabilitation shall be heard on an expedited basis.
- (b) A stay of an order of rehabilitation or an order approving a plan of rehabilitation may not be granted unless the appellant demonstrates that extraordinary circumstances warrant delaying the recovery under the plan of rehabilitation of all other persons, including policyholders.
- (c) If a plan of rehabilitation provides an appropriate mechanism for adjustment in the event of an adverse ruling from an appeal, a stay may not be granted.

Enacted by Chapter 309, 2007 General Session

31A-27a-302. Powers and duties of the rehabilitator.

- (1) (a) With court approval, the rehabilitator may take an action the rehabilitator considers necessary or appropriate to reform and revitalize the insurer, including:
 - (i) canceling:
 - (A) a policy;

- (B) an insurance or reinsurance contract, other than life insurance, health insurance, or an annuity;
- (C) a surety bond; or
- (D) a surety undertaking; or
- (ii) transferring to a solvent assuming insurer:
 - (A) a policy;
 - (B) an insurance or reinsurance contract;
 - (C) a surety bond; or
 - (D) a surety undertaking.
- (b) The rehabilitator has all the powers of the directors, officers, and managers of the insurer, whose authority is suspended, except as redelegated by the rehabilitator.
- (c) The rehabilitator has full power to:
 - (i) direct and manage the insurer;
 - (ii) hire and discharge employees; and
 - (iii) deal with the property and business of the insurer.
- (d) The rehabilitator is not liable as the result of good faith issuance or renewal of a policy while in rehabilitation.
- (2) The rehabilitator may pursue all appropriate legal remedies on behalf of the insurer if it appears to the rehabilitator that there is or has been criminal or tortious conduct, or breach of a contractual or fiduciary obligation detrimental to the insurer by an officer, a manager, an agent, a broker, an employee, an affiliate, or other person.
- (3) (a) The rehabilitator may assert all defenses available to the insurer as against a third person, including statutes of limitations, statutes of frauds, and the defense of usury.
- (b) A waiver of a defense by the insurer after a petition pursuant to Section 31A-27a-201 or 31A-27a-207 is filed does not bind the rehabilitator.
- (4) The enumeration of the powers and authority of the rehabilitator in this section:
 - (a) may not be construed as a limitation upon the rehabilitator; and
 - (b) does not exclude in any manner the right to do other acts:
 - (i) not specifically enumerated or otherwise provided for; and
 - (ii) as may be necessary or appropriate for the accomplishment of or in aid of the purpose of rehabilitation.

Enacted by Chapter 309, 2007 General Session

31A-27a-303. Filing of rehabilitation plans.

- (1) (a) The rehabilitator shall prepare and file a plan to effect rehabilitation with the receivership court within:
 - (i) one year after the day on which the rehabilitation order is entered; or
 - (ii) such further time as the receivership court may allow.
- (b) The receivership court may take an action described in Subsection (1)(c):
 - (i) upon application of the rehabilitator for approval of a plan; and
 - (ii) after the notice and hearings the receivership court may prescribe.
- (c) If the conditions of Subsection (1)(b) are met, the receivership court may:
 - (i) approve the plan proposed;

- (ii) disapprove the plan proposed; or
- (iii) (A) modify the plan proposed; and
(B) approve the plan as modified.
- (d) If the plan is approved, the rehabilitator shall carry out the plan.
- (e) In the case of a life insurer, the plan proposed may:
 - (i) include the imposition of a lien upon a policy of the insurer, if all rights of shareholders are relinquished; and
 - (ii) propose imposition of a moratorium upon loan and cash surrender rights under a policy for a period not to exceed one year from the day on which the order approving the rehabilitation plan is entered, unless the receivership court, for good cause shown, extends the moratorium.
- (2) Once a plan is filed, any party in interest may object to the plan.
- (3) A plan shall:
 - (a) except as provided in Subsection (5), provide no less favorable treatment of a claim or class of claims than would occur in liquidation, unless the holder of a particular claim or interest agrees to a less favorable treatment of that particular claim or interest;
 - (b) provide adequate means for the plan's implementation;
 - (c) contain information concerning the financial condition of the insurer and the operation and effect of the plan, as far as is reasonably practicable in light of:
 - (i) the nature and history of the insurer;
 - (ii) the condition of the insurer's records; and
 - (iii) the nature of the plan; and
 - (d) provide for the disposition of the records relevant to the duties and obligations covered by the plan.
- (4) A plan may include any other provisions not inconsistent with this chapter, including:
 - (a) payment of distributions;
 - (b) (i) assumption or reinsurance of all or a portion of the insurer's remaining liabilities by a licensed insurer or other entity; and
(ii) transfer of assets and related records to the licensed insurer or other entity;
 - (c) to the extent appropriate, application of insurance company regulatory market conduct standards to any entity administering claims on behalf of the receiver or assuming direct liabilities of the insurer;
 - (d) contracting with a guaranty association or any other qualified entity to perform the administration of claims;
 - (e) annual independent financial and performance audits of any entity administering claims on behalf of the receiver that is not otherwise subject to examination pursuant to state insurance law; and
 - (f) termination of the insurer's liabilities other than those under policies of insurance as of a date certain.
- (5) (a) A plan may designate and separately treat one or more separate subclasses consisting only of those claims within the subclasses that are for or reduced to de minimis amounts.
- (b) For purposes of this Subsection (5), a "de minimis amount" is an amount equal to or less than a maximum de minimis amount approved by the receivership court

as being reasonable and necessary for administrative convenience.

Enacted by Chapter 309, 2007 General Session

31A-27a-304. Termination of rehabilitation.

(1) (a) The rehabilitator may move for an order of liquidation whenever the rehabilitator believes further attempts to rehabilitate an insurer would:

(i) substantially increase the risk of loss to creditors, policyholders, or the public;
or

(ii) be futile.

(b) In accordance with Section 31A-27a-305, the rehabilitator or the rehabilitator's designated representative shall coordinate with an affected guaranty association and any national association of guaranty associations to plan for transition to liquidation.

(2) The rehabilitator shall petition the receivership court for an order of liquidation or seek an order, on good cause shown, for a longer suspension period if:

(a) the payment of a policy obligation is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator; and

(b) the rehabilitator has not filed an application for approval of a plan under Section 31A-27a-303.

(3) (a) The receivership court may enter an order terminating rehabilitation of an insurer:

(i) on petition from the rehabilitator, which may be made at any time;

(ii) on petition from the directors of the insurer, which may be made at any time;
or

(iii) on the receivership court's own motion.

(b) Subject to Section 31A-27a-801, if the receivership court finds that rehabilitation is accomplished and that grounds for rehabilitation under Section 31A-27a-207 no longer exist, the receivership court shall order that the insurer be restored to:

(i) title and possession of its property; and

(ii) the control of the business.

Enacted by Chapter 309, 2007 General Session

31A-27a-305. Coordination with guaranty associations and orderly transition to liquidation.

(1) No later than 30 days following the day on which an order of rehabilitation is entered the rehabilitator or the rehabilitator's designated representative shall:

(a) consult with any potentially affected guaranty association or the affected guaranty association's designated representative to determine the extent to which the affected guaranty association will be impacted by or may assist in the efforts to rehabilitate the insurer; and

(b) provide appropriate information to the affected guaranty association described in Subsection (1)(a) to allow the affected guaranty association to evaluate and discharge its statutory responsibilities.

(2) (a) The rehabilitator shall begin appropriate contingency planning and organizing so that an orderly transition to liquidation occurs, if liquidation is necessary.

(b) An orderly transition to liquidation requires, among other things, that the rehabilitator:

(i) to the fullest extent possible, reserve sufficient assets to continue to meet obligations under insurance policies of the insolvent insurer until guaranty associations are triggered; and

(ii) conduct affairs in such a way and cooperate as necessary with affected guaranty associations:

(A) to ensure that affected guaranty associations are provided with:

(I) appropriate information;

(II) necessary updates at reasonable intervals; and

(III) a reasonable period of time to plan and organize; and

(B) so that affected guaranty associations are able to properly discharge statutory responsibilities upon being triggered.

(3) Appropriate information as referred to in this section:

(a) at a minimum includes the following for lines of business written by the insurer, whether covered or not covered by a guaranty association:

(i) a general description of the different types of business written or assumed by the insurer;

(ii) claim counts and policy counts by state and by line of business;

(iii) claim and policy reserves;

(iv) account values;

(v) cash surrender values;

(vi) policy loans;

(vii) interest crediting history;

(viii) premiums and mode of payment;

(ix) unpaid claims and amounts;

(x) sample policies and endorsements;

(xi) listing of different locations of claim files;

(xii) if a third party administrator is used, a copy of an executed contract and a description of the contractual arrangements; and

(xiii) information concerning claims in litigation or dispute, including a listing of claims with assigned defense counsel for those claims going to trial in the near future after a possible liquidation date;

(b) includes information concerning states in which the insurer is or was licensed;

(c) includes information concerning time periods for which the insurer is or was licensed; and

(d) includes other information reasonably requested by an affected guaranty association necessary for the affected guaranty association to fulfill its statutory duties.

(4) (a) The listing of information in Subsection (3) is not necessarily an exclusive list.

(b) To ensure that an orderly transition to liquidation occurs, information not listed in Subsection (3) may be needed and may be appropriately provided by the receiver.

(5) In the case of a property and casualty insurer, the rehabilitator, in cooperation with affected guaranty associations, shall make all reasonable efforts to prepare the insurer's electronic policy and claims data so that, upon the entry of an order of liquidation, the data will be ready for transmission using the Uniform Data Standards as promulgated by the National Association of Insurance Commissioners.

Enacted by Chapter 309, 2007 General Session

31A-27a-401. Liquidation orders.

- (1) (a) An order to liquidate the business of an insurer shall:
- (i) appoint the commissioner and any successor in office as the liquidator; and
 - (ii) direct the liquidator to:
 - (A) take possession of the property of the insurer; and
 - (B) administer the property subject to this chapter.
- (b) As of the entry of the final order of liquidation, the liquidator is vested by operation of law with the title to the following, wherever located, of the insurer ordered liquidated:
- (i) all property;
 - (ii) all contracts;
 - (iii) all rights of action; and
 - (iv) all records.
- (2) Upon issuance of the order of liquidation, the rights and liabilities of the insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the day on which the order of liquidation is entered:
- (a) except as provided in Sections 31A-27a-402, 31A-27a-403, and 31A-27a-605; and
 - (b) unless otherwise fixed by the liquidation court.
- (3) An order to liquidate the business of an alien insurer in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer.
- (4) (a) Whenever applicable, a petition for liquidation should include a request for a judicial declaration or finding of insolvency.
- (b) After providing proper notice and hearing, the receivership court may at any time make the declaration of insolvency.
- (5) If an order of liquidation is set aside upon appeal, the insurer is not released from delinquency proceedings except in accordance with Section 31A-27a-801.

Enacted by Chapter 309, 2007 General Session

31A-27a-402. Continuance of coverage.

- (1) Notwithstanding any policy or contract language or any other statute, and unless ordered otherwise by the receivership court upon application by the receiver, a reinsurance contract by which the insurer assumes the insurance obligations of another insurer is cancelled upon entry of an order of liquidation.
- (2) (a) Notwithstanding any policy or contract language or any other statute, and

subject to Subsection (2)(c), the following in effect at the time of issuance of an order of liquidation shall continue in force as provided in this section until the time period specified in Subsection (2)(b):

- (i) a policy;
- (ii) an insurance contract, other than reinsurance by which the insurer has ceded insurance obligations to another person;

- (iii) a surety bond; or

- (iv) a surety undertaking.

- (b) Any item listed in Subsection (2)(a) continues in force:

- (i) until the earlier of:

- (A) 30 days from the day on which the liquidation order is entered;

- (B) the day on which the policy coverage expires;

- (C) the day on which the insured:

- (I) replaces the insurance coverage with equivalent insurance with another insurer; or

- (II) otherwise terminates the policy;

- (D) the day on which the liquidator effects a transfer of the policy obligation pursuant to Subsection 31A-27a-405(1)(i); or

- (E) the date proposed by the liquidator and approved by the receivership court to cancel coverage; or

- (ii) unless further extended by the receiver with the approval of the receivership court.

- (c) This Subsection (2) does not apply to:

- (i) life insurance;

- (ii) disability income insurance;

- (iii) long-term care insurance;

- (iv) health insurance; or

- (v) an annuity.

- (3) An order of liquidation under Section 31A-27a-401 terminates coverages at the time specified in Subsections (1) and (2) for purposes of any other statute.

- (4) (a) A life insurance policy, disability income insurance policy, long-term care insurance policy, health insurance policy, or an annuity continues in force:

- (i) if covered by an affected guaranty association or portions are covered by one or more affected guaranty associations, under applicable law;

- (ii) subject to the terms of the policy or annuity, including any terms restructured pursuant to a court-approved rehabilitation plan; and

- (iii) to the extent necessary to permit an affected guaranty association to discharge its statutory obligations.

- (b) A life insurance policy, disability income insurance policy, long-term care insurance policy, health insurance policy, or an annuity not covered by one or more guaranty associations, or those portions not covered by one or more guaranty associations terminates as provided under Subsection (2), except to the extent that the liquidator proposes and the receivership court approves the use of property of the estate, consistent with Section 31A-27a-701, for the purpose of continuing the contract or coverage by transferring the contract or coverage to an assuming reinsurer.

- (5) The cancellation of a bond or surety undertaking does not release any

cosurety or guarantor.

(6) Except as otherwise provided in this chapter, the obligations of the insolvent insurer's reinsurers may not be released or discharged of a policy ceded to a reinsurer by a termination under this section.

(7) A contract by which the insurer reinsures obligations arising under a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity continues or terminates as provided in Section 31A-27a-513.

Enacted by Chapter 309, 2007 General Session

31A-27a-403. Continuance of coverage -- Health maintenance organizations.

(1) As used in this section:

(a) "Basic health care services" is as defined in Section 31A-8-101.

(b) "Enrollee" is as defined in Section 31A-8-101.

(c) "Health care" is as defined in Section 31A-1-301.

(d) "Health maintenance organization" is as defined in Section 31A-8-101.

(e) "Limited health plan" is as defined in Section 31A-8-101.

(f) (i) "Managed care organization" means an entity licensed by, or holding a certificate of authority from, the department to furnish health care services or health insurance.

(ii) "Managed care organization" includes:

(A) a limited health plan;

(B) a health maintenance organization;

(C) a preferred provider organization;

(D) a fraternal benefit society; or

(E) an entity similar to an entity described in Subsections (1)(f)(ii)(A) through (D).

(iii) "Managed care organization" does not include:

(A) an insurer or other person that is eligible for membership in a guaranty association under Chapter 28, Guaranty Associations;

(B) a mandatory state pooling plan;

(C) a mutual assessment company or an entity that operates on an assessment basis; or

(D) an entity similar to an entity described in Subsections (1)(f)(iii)(A) through (C).

(g) "Participating provider" means a provider who, under a contract with a managed care organization authorized under Section 31A-8-407, agrees to provide health care services to enrollees with an expectation of receiving payment:

(i) directly or indirectly, from the managed care organization; and

(ii) other than a copayment.

(h) "Participating provider contract" means the agreement between a participating provider and a managed care organization authorized under Section 31A-8-407.

(i) "Preferred provider" means a provider who agrees to provide health care services under an agreement authorized under Subsection 31A-22-617(1).

(j) "Preferred provider contract" means the written agreement between a

preferred provider and a managed care organization authorized under Subsection 31A-22-617(1).

(k) (i) Except as provided in Subsection (1)(k)(ii), "preferred provider organization" means a person that:

(A) furnishes at a minimum, through a preferred provider, basic health care services to an enrollee in return for prepaid periodic payments in an amount agreed to before the time during which the health care may be furnished;

(B) is obligated to the enrollee to arrange for the services described in Subsection (1)(k)(i)(A); and

(C) permits the enrollee to obtain health care services from a provider who is not a preferred provider.

(ii) "Preferred provider organization" does not include:

(A) an insurer licensed under Chapter 7, Nonprofit Health Service Insurance Corporations; or

(B) an individual who contracts to render professional or personal services that the individual performs.

(l) "Provider" is as defined in Section 31A-8-101.

(m) "Uncovered expenditure" means a cost of health care services that is covered by an organization for which an enrollee is liable in the event of the managed care organization's insolvency.

(2) The rehabilitator or liquidator may take one or more of the actions described in Subsections (2)(a) through (g) to assure continuation of health care coverage for enrollees of an insolvent managed care organization.

(a) (i) Subject to Subsection (2)(a)(ii), a rehabilitator or liquidator may require a participating provider or preferred provider to continue to provide the health care services the provider is required to provide under the provider's participating provider contract or preferred provider contract until the earlier of:

(A) 90 days after the day on which the following is filed:

(I) a petition for rehabilitation; or

(II) a petition for liquidation; or

(B) the day on which the term of the contract ends.

(ii) A requirement by the rehabilitator or liquidator under Subsection (2)(a)(i) that a participating provider or preferred provider continue to provide health care services under the provider's participating provider contract or preferred provider contract expires when health care coverage for all enrollees of the insolvent managed care organization is obtained from another managed care organization or insurer.

(b) (i) Subject to Subsection (2)(b)(ii), a rehabilitator or liquidator may reduce the fees a participating provider or preferred provider is otherwise entitled to receive from the managed care organization under the provider's participating provider contract or preferred provider contract during the time period in Subsection (2)(a)(i).

(ii) Notwithstanding Subsection (2)(b)(i), a rehabilitator or liquidator may not reduce a fee to less than 75% of the regular fee set forth in the provider's participating provider contract or preferred provider contract.

(iii) An enrollee shall continue to pay the same copayments, deductibles, and other payments for services received from a participating provider or preferred provider that the enrollee is required to pay before the day on which the following is filed:

- (A) the petition for rehabilitation; or
- (B) the petition for liquidation.
- (c) A participating provider or preferred provider shall:
 - (i) accept the amounts specified in Subsection (2)(b) as payment in full; and
 - (ii) relinquish the right to collect additional amounts from the insolvent managed care organization's enrollee.
- (d) Subsections (2)(b) and (c) apply to the fees paid to a provider who agrees to provide health care services to an enrollee but is not a preferred or participating provider.
- (e) If the managed care organization is a health maintenance organization, Subsections (2)(e)(i) through (vi) apply.
 - (i) A solvent health maintenance organization licensed under Chapter 8, Health Maintenance Organizations and Limited Health Plans, shall extend to the enrollees of an insolvent health maintenance organization all rights, privileges, and obligations of being an enrollee in the accepting health maintenance organization:
 - (A) subject to Subsections (2)(e)(ii), (iii), and (v);
 - (B) upon notification from and subject to the direction of the rehabilitator or liquidator of an insolvent health maintenance organization licensed under Chapter 8, Health Maintenance Organizations and Limited Health Plans; and
 - (C) if the solvent health maintenance organization operates within a portion of the insolvent health maintenance organization's service area.
 - (ii) Notwithstanding Subsection (2)(e)(i), the accepting health maintenance organization shall give credit to an enrollee for any waiting period already satisfied under the enrollee's contract with the insolvent health maintenance organization.
 - (iii) A health maintenance organization accepting an enrollee of an insolvent health maintenance organization under Subsection (2)(e)(i) shall charge the enrollee the premiums applicable to the existing business of the accepting health maintenance organization.
 - (iv) A health maintenance organization's obligation to accept an enrollee under Subsection (2)(e)(i) is limited in number to the accepting health maintenance organization's pro rata share of all health maintenance organization enrollees in this state, as determined after excluding the enrollees of the insolvent insurer.
 - (v) (A) The rehabilitator or liquidator of an insolvent health maintenance organization shall take those measures that are possible to ensure that no health maintenance organization is required to accept more than its pro rata share of the adverse risk represented by the enrollees of the insolvent health maintenance organization.
 - (B) If the methodology used by the rehabilitator or liquidator to assign an enrollee is one that can be expected to produce a reasonably equitable distribution of adverse risk, that methodology and its results are acceptable under this Subsection (2)(e)(v).
 - (vi) (A) Notwithstanding Section 31A-27a-402, the rehabilitator or liquidator may require all solvent health maintenance organizations to pay for the covered claims incurred by the enrollees of the insolvent health maintenance organization.
 - (B) As determined by the rehabilitator or liquidator, payments required under this Subsection (2)(e)(vi) may:

(I) begin as of the day on which the following is filed:

(Aa) the petition for rehabilitation; or

(Bb) the petition for liquidation; and

(II) continue for a maximum period through the time all enrollees are assigned pursuant to this section.

(C) If the rehabilitator or liquidator makes an assessment under this Subsection (2)(e)(vi), the rehabilitator or liquidator shall assess each solvent health maintenance organization its pro rata share of the total assessment based upon its premiums from the previous calendar year.

(D) (I) A solvent health maintenance organization required to pay for covered claims under this Subsection (2)(e)(vi) may file a claim against the estate of the insolvent health maintenance organization.

(II) Any claim described in Subsection (2)(e)(vi)(D)(I), if allowed by the rehabilitator or liquidator, shall share in any distributions from the estate of the insolvent health maintenance organization as a Class 3 claim.

(f) (i) A rehabilitator or liquidator may transfer, through sale or otherwise, the group and individual health care obligations of the insolvent managed care organization to one or more other managed care organizations or other insurers, if those other managed care organizations and other insurers:

(A) are licensed to provide the same health care services in this state that are held by the insolvent managed care organization; or

(B) have a certificate of authority to provide the same health care services in this state that is held by the insolvent managed care organization.

(ii) The rehabilitator or liquidator may combine group and individual health care obligations of the insolvent managed care organization in any manner the rehabilitator or liquidator considers best to provide for continuous health care coverage for the maximum number of enrollees of the insolvent managed care organization.

(iii) If the terms of a proposed transfer of the same combination of group and individual policy obligations to more than one other managed care organization or insurer are otherwise equal, the rehabilitator or liquidator shall give preference to the transfer of the group and individual policy obligations of an insolvent managed care organization as follows:

(A) from one category of managed care organization to another managed care organization of the same category, as follows:

(I) from a limited health plan to a limited health plan;

(II) from a health maintenance organization to a health maintenance organization;

(III) from a preferred provider organization to a preferred provider organization;

(IV) from a fraternal benefit society to a fraternal benefit society; and

(V) from an entity similar to an entity described in this Subsection (2)(f)(iii)(A) to a category that is similar;

(B) from one category of managed care organization to another managed care organization, regardless of the category of the transferee managed care organization; and

(C) from a managed care organization to a nonmanaged care provider of health care coverage, including insurers.

(g) If an insolvent managed care organization has required surplus, a rehabilitator or liquidator may use the insolvent managed care organization's required surplus to continue to provide coverage for the insolvent managed care organization's enrollees, including paying uncovered expenditures.

Enacted by Chapter 309, 2007 General Session

31A-27a-404. Sale or dissolution of the insurer's corporate entity.

(1) Notwithstanding the entry of a liquidation order, the liquidator may apply for an order to sell or dissolve the corporate entity or charter of a domestic insurer, or the United States branch of an alien insurer domiciled in this state:

- (a) at any time after an order of liquidation of the insurer is granted; and
- (b) consistent with this section.

(2) Upon an application to sell the corporate entity or charter, with notice as prescribed in this chapter, the receivership court may enter an order:

(a) separating the corporate entity or charter, together with any of its licenses to do business and the assets the liquidator considers appropriate to the transaction, from:

- (i) the remaining estate in liquidation;
- (ii) all of the remaining estate's assets; and
- (iii) the claims or interests of all claimants, creditors, policyholders, and stockholders;

(b) canceling all outstanding stock and other securities of, and other equity interests in, the corporate entity or charter, except that the cancellation may not affect any claim against the estate by holders of the equity interests;

(c) authorizing the issuance and sale of new stock or other securities for the purpose of transferring to one or more buyers control and ownership of the corporate entity or charter; and

(d) authorizing the sale of the corporate entity or charter, together with any of its licenses to do business and the general assets the liquidator considers appropriate to the transaction, free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders.

(3) (a) The sale of the corporate entity or charter may be made in the manner and on the terms and conditions:

- (i) applied for by the liquidator; and
- (ii) ordered by the receivership court.

(b) A sale is subject to the domiciliary state's laws regarding acquisition of an insurer under Chapter 16, Insurance Holding Companies.

(c) Upon the sale of a corporate entity or charter:

(i) the proceeds from the sale become a part of the property of the estate in liquidation; and

(ii) the then separate corporate entity or charter, together with any of its licenses to do business and the assets the liquidator considers appropriate to the transaction, is free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders of the insurer in liquidation.

(d) The court has broad powers to effect the disposition of a corporate entity and its charter including, without limiting the statement of broad powers, a reorganization or

conversion of the corporate entity.

(4) This section shall be liberally construed to:

(a) accomplish its purposes to provide an expeditious and effective procedure to realize the maximum proceeds possible from the sale of a corporate entity or charter separated from an estate in liquidation; and

(b) ensure that a purchaser receives clear and marketable title.

(5) If permission to sell the corporate entity or charter is not granted before discharge of the liquidator, in accordance with this section or otherwise with receivership court approval:

(a) the receivership court may order dissolution of the corporate entity or charter;

(b) dissolution is considered complete by operation of law upon the discharge of the liquidator if the insurer is insolvent; or

(c) dissolution may be ordered by the receivership court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

Enacted by Chapter 309, 2007 General Session

31A-27a-405. Powers of the liquidator.

(1) The liquidator may:

(a) (i) hold hearings, subpoena a witness to compel the witness' attendance, administer oaths, examine a person under oath, and compel a person to subscribe to that person's testimony after the testimony is correctly reduced to writing; and

(ii) in connection with a power listed in Subsection (1)(a)(i), require the production of a record that the liquidator considers relevant to the inquiry;

(b) audit the records of all agents of the insurer to the extent that those records relate to the business activities of the insurer;

(c) collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose to:

(i) institute action in another jurisdiction, to forestall garnishment and attachment proceedings against the debt;

(ii) in addition to paying other Class 1 claims described in Subsection 31A-27a-701(2)(a), if the payment assists or results in the collection or recovery of property of the insurer that provides a net benefit to creditors of the estate, pay Class 1 administrative costs of the estate:

(A) upon approval of the receivership court; and

(B) only to the extent of the collection or recovery of the property;

(iii) do any other act as is necessary or expedient to collect, conserve, or protect the insurer's property, including the power to sell, compound, compromise, or assign a debt for purposes of collection upon the terms and conditions that the liquidator considers consistent with this chapter; and

(iv) pursue any creditor's remedies available to enforce a claim of the insurer;

(d) conduct public and private sales of the property of the insurer;

(e) subject to Subsection (6), use property of the estate of an insurer under a liquidation order to transfer:

(i) (A) a policy obligation; or

(B) (I) the insurer's obligations under a surety bond or a surety undertaking; and
(II) collateral held by the insurer with respect to the reimbursement obligations of the principals under the surety bond or surety undertaking;
(ii) to a solvent assuming insurer; and
(iii) if the transfer can be arranged without prejudice to applicable priorities under Section 31A-27a-701;

(f) subject to Subsection (4), acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the estate:
(i) at its market value; or
(ii) upon terms and conditions that are fair and reasonable;
(g) execute, acknowledge, and deliver any deed, assignment, release, or other instrument necessary or proper to effectuate a sale of property or other transaction in connection with the liquidation;

(h) (i) subject to Subsection (7), borrow money for the purpose of facilitating the liquidation:
(A) on the security of the property of the estate; or
(B) without security; and
(ii) execute and deliver a document necessary to the transaction to borrow money;
(i) (i) enter into a contract necessary to carry out the order to liquidate; and
(ii) subject to Section 31A-27a-113, assume or reject an executory contract or unexpired lease to which the insurer is a party;
(j) (i) continue to prosecute or to institute in the name of the insurer or in the liquidator's own name a suit or other legal proceeding, in this state or elsewhere; and
(ii) abandon the prosecution of a claim the liquidator considers unprofitable to pursue further;

(k) if the insurer is dissolved under Section 31A-27a-404, apply to a court in this state or elsewhere for leave to substitute the liquidator for the insurer as a party;

(l) subject to Subsection (8), prosecute or assert with exclusive standing an action that may exist on behalf of the public or a creditor, member, policyholder, or shareholder of the insurer against a person, except to the extent that:
(i) a claim is personal to a specific creditor, member, policyholder, or shareholder; and
(ii) recovery on the claim would not inure to the benefit of the estate;

(m) subject to Subsection (8), take possession of a record or property of the insurer as may be convenient for the purposes of efficient and orderly execution of the liquidation;

(n) deposit in one or more banks in this state sums required for meeting current administration expenses and dividend distributions;

(o) invest all sums not currently needed, unless the receivership court orders otherwise;

(p) file any necessary document for record in the office of a recorder of deeds or record office in this state or elsewhere where property of the insurer is located;

(q) subject to Subsection (9), assert all defenses available to the insurer as against a third person, including statutes of limitations, statutes of frauds, and the defense of usury;

(r) exercise and enforce all the rights, remedies, and powers of a creditor, shareholder, policyholder, or member, including any power to avoid a transfer or lien that may be voidable under this chapter or otherwise;

(s) (i) intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee for the insurer or any of its property; and

(ii) act as the receiver or trustee whenever the appointment is offered;

(t) enter into an agreement with a receiver or commissioner of any other state; and

(u) exercise all powers held on or conferred after April 30, 2007, on a receiver by the laws of this state not inconsistent with this chapter.

(2) The liquidator is vested with all the rights of the one or more entities in receivership.

(3) The enumeration of the powers and authority of the liquidator in this section:

(a) may not be construed as a limitation upon the liquidator; and

(b) does not exclude in any manner the right to do other acts:

(i) not specifically enumerated or otherwise provided for; and

(ii) to the extent necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(4) (a) The liquidator may take the following actions as provided in this Subsection (4):

(i) hypothecate, encumber, lease, sell, transfer, abandon, or otherwise dispose of or deal with property of the insurer;

(ii) settle or resolve a claim brought by the liquidator on behalf of the insurer; or

(iii) commute or settle a claim of reinsurance under a contract of reinsurance.

(b) The liquidator may take an action described in Subsection (4)(a) at the liquidator's discretion if the property or claim has a market or settlement value, as shown on the receivership's financial statements, that does not exceed:

(i) the lesser of:

(A) \$1,000,000; or

(B) 10% of the general assets of the estate; or

(ii) an amount increased from the amount described in Subsection (4)(b)(i), if the receivership court increases the amount upon a petition of the liquidator and a showing that compliance with this Subsection (4)(b) is:

(A) burdensome to the liquidator in administering the estate; and

(B) unnecessary to protect the material interests of creditors.

(c) In all instances other than those described in Subsection (4)(b), the liquidator may take an action described in Subsection (4)(a) only after obtaining approval of the receivership court as provided in Section 31A-27a-107.

(d) The liquidator may, at the liquidator's discretion, request the receivership court to approve a proposed action as provided in Section 31A-27a-107:

(i) if the value of the property or claim appears to be less than the threshold provided in Subsection (4)(b) but cannot be ascertained with certainty; or

(ii) for any other reason as determined by the liquidator.

(e) (i) After obtaining approval of the receivership court as provided in Section 31A-27a-107, the liquidator may transfer rights to payment under a ceding reinsurance agreement covering policy to a third party transferee.

(ii) The transferee has the rights to collect and enforce collection of the reinsurance for the amount payable to the ceding insurer or to its receiver:

(A) without diminution because:

(I) of the insolvency; or

(II) the receiver failed to pay all or a portion of the claim; and

(B) on the basis of the amounts paid or allowed pursuant to Section 31A-27a-511.

(iii) The transfer of the rights described in Subsection (4)(e)(ii) does not give rise to any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of whether the agreement or other applicable law prohibits the transfer of rights under the reinsurance agreement.

(iv) Except as provided in this Subsection (4), a transfer of rights pursuant to this Subsection (4)(e) may not impair any right or defense of the reinsurer that:

(A) exists before the transfer; or

(B) would have existed in the absence of the transfer.

(v) Except as otherwise provided in this Subsection (4), a transfer of rights pursuant to this Subsection (4)(e) does not relieve the transferee or the liquidator from an obligation owed to the reinsurer pursuant to the reinsurance or other agreement.

(5) (a) The liquidator is not obligated to defend an action against the insurer or insured.

(b) If a defense is an obligation of the insurer, an insured not defended by a guaranty association may:

(i) provide its own defense; and

(ii) include the cost of the defense as part of the insured's claim.

(c) The right of the liquidator to contest coverage on a particular claim is preserved without the necessity for an express reservation of rights.

(6) Once a liquidator makes a transfer described in Subsection (1)(e), the estate has no further liability under a transferred policy, surety bond, or surety undertaking after the transfer is made if:

(a) all insureds, principals, third party claimants, and obligees under the policy, surety bond, or surety undertaking consent; or

(b) the receivership court so orders.

(7) Funds borrowed under Subsection (1)(h):

(a) may be repaid as an administrative expense; and

(b) have priority over any other claims in Class 1 under the priority of distribution.

(8) (a) Subsection (1)(l) does not infringe or impair any of the rights provided to an affected guaranty association pursuant to its enabling statute or otherwise.

(b) Notwithstanding Subsection (1)(m), an affected guaranty association shall have reasonable access to the records of the insurer necessary for the affected guaranty association to carry out its statutory obligations.

(9) (a) A waiver of a defense by the insurer after a petition pursuant to Section 31A-27a-201 or 31A-27a-207 is filed does not bind the liquidator.

(b) Notwithstanding Subsection (1)(q), when an affected guaranty association determines it has an obligation to defend a suit, the liquidator:

(i) shall defer to that obligation; and

- (ii) may defend only in cooperation with the affected guaranty association.

Enacted by Chapter 309, 2007 General Session

31A-27a-406. Notice to creditors and others.

(1) Unless the receivership court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) by first-class mail or electronic communication as permitted by the receivership court to the following at their last-known address:

(i) all of the insurer's agents, brokers, or producers of record with a current appointment or current license to represent the insurer; and

(ii) all other agents, brokers, or producers that the liquidator considers appropriate;

(b) by first-class mail or electronic communication as permitted by the receivership court to:

(i) all current policyholders;

(ii) all pending claimants; and

(iii) as determined by the receivership court, former policyholders and other creditors; and

(c) by publication:

(i) once in a newspaper of general circulation in:

(A) the county in which the insurer has its principal place of business; and

(B) other locations that the liquidator considers appropriate; and

(ii) as required in Section 45-1-101.

(2) The notice of the entry of an order of liquidation shall contain or provide directions for obtaining the following information:

(a) a statement that the insurer has been placed in liquidation;

(b) a statement:

(i) explaining that certain acts are stayed under Section 31A-27a-108; and

(ii) describing any additional injunctive relief ordered by the receivership court;

(c) a statement whether, and to what extent, the insurer's policies continue in effect;

(d) to the extent applicable, a statement that coverage by guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws;

(e) a statement of:

(i) the deadline for filing claims, if established; and

(ii) the requirements for filing a proof of claim pursuant to Section 31A-27a-601 on or before that date;

(f) a statement of the date, time, and location of any initial status hearing scheduled at the time the notice is sent;

(g) a description of the process for obtaining notice of matters before the receivership court; and

(h) other information as the liquidator or the receivership court considers appropriate.

(3) If notice is given in accordance with this section, the distribution of property

of the insurer under this chapter is conclusive with respect to all claimants, whether or not the claimant received notice.

(4) (a) Notwithstanding the other provisions of this section, the liquidator has no duty to locate any person if:

- (i) no address is found in the records of the insurer; or
- (ii) a mailing is returned to the liquidator because of inability to deliver at the address shown in the insurer's records.

(b) In the circumstances described in Subsection (4)(a), the notice by publication as required by this chapter or actual notice received is sufficient notice.

(c) Written certification by the liquidator or other knowledgeable person acting for the liquidator that a notice is deposited in the United States mail, postage prepaid, or that the notice is electronically transmitted is prima facie evidence of mailing and receipt.

(d) A claimant has a duty to keep the liquidator informed of any change of address.

(5) Notwithstanding Subsection (1):

(a) upon application of the liquidator, the receivership court may find that notice by publication as required in this section is sufficient notice to those persons holding an occurrence policy:

(i) that expired more than four years before the day on which the order of liquidation is entered; and

(ii) under which there are no pending claims; or

(b) the receivership court may order other notice to those persons that the receivership court considers appropriate.

Amended by Chapter 388, 2009 General Session

31A-27a-407. Duties of agents.

(1) (a) At the request of the liquidator, an agent receiving notice of the entry of the liquidation order shall provide notice of that order:

(i) on a form prescribed by the liquidator;

(ii) to:

(A) each policyholder of a policy issued through the agent; and

(B) other person named in a policy issued through the agent; and

(iii) within:

(A) 15 days of the day on which the agent receives the notice; or

(B) a longer time as the liquidator may require.

(b) Within 30 days of the mailing required by Subsection (1)(a), the agent shall provide as prescribed by the liquidator:

(i) a certification of mailing; and

(ii) a list of insureds to which notice is provided.

(2) (a) A person who represents the insurer as an agent and receives notice in the form prescribed in Section 31A-27a-406, shall, within 30 days of the day on which the notice being sent, provide to the liquidator:

(i) the information the agent is required to provide pursuant to Section 31A-27a-110, if any;

- (ii) the information in the agent's records related to any policy issued by the insurer through the agent; and
 - (iii) if the agent is a general agent, the information in the general agent's records related to any policy issued by the insurer through an agent under contract to the general agent, including the name and address of the subagent.
- (b) Except where the ownership of the expiration of the policy is transferred to another, a policy is considered issued through an agent if the agent:
- (i) has a property interest in the expiration of the policy; or
 - (ii) has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy.
- (3) If an agent fails to provide information to the liquidator as required in Subsection (2), the commissioner after holding a hearing may:
- (a) impose against the agent a penalty of not more than \$1,000; and
 - (b) suspend the agent's license.
- (4) Notwithstanding an agent's property interest, if any, in the expiration of a policy, the liquidator has the exclusive power to determine whether, and under what terms, to cancel or transfer the policy.

Enacted by Chapter 309, 2007 General Session

31A-27a-501. Turnover of assets.

- (1) (a) If the receiver determines that funds or property in the possession of another person are rightfully the property of the estate, the receiver shall deliver to the person a written demand for immediate delivery of the funds or property:
- (i) referencing this section by number;
 - (ii) referencing the court and docket number of the receivership action; and
 - (iii) notifying the person that any claim of right to the funds or property by the person shall be presented to the receivership court within 20 days of the day on which the person receives the written demand.
- (b) (i) A person who holds funds or other property belonging to an entity subject to an order of receivership under this chapter shall deliver the funds or other property to the receiver on demand.
- (ii) If the person described in Subsection (1)(b)(i) alleges a right to retain the funds or other property, the person shall:
- (A) file a pleading with the receivership court setting out that right within 20 days of the day on which the person receives the demand that the funds or property be delivered to the receiver; and
 - (B) serve a copy of the pleading on the receiver.
- (iii) The pleading described in Subsection (1)(b)(ii) shall inform the receivership court as to:
- (A) the nature of the claim to the funds or property;
 - (B) the alleged value of the property or amount of funds held; and
 - (C) what action has been taken by the person to preserve any funds or to preserve and protect the property pending determination of the dispute.
- (c) The relinquishment of possession of funds or property by a person who receives a demand pursuant to this section is not a waiver of a right to make a claim in

the receivership.

(2) (a) If requested by the receiver, the receivership court shall hold a hearing to determine where and under what conditions the funds or property shall be held by a person described in Subsection (1) pending determination of a dispute concerning the funds or property.

(b) The receivership court may impose the conditions the receivership court considers necessary or appropriate for the preservation of the funds or property until the receivership court can determine the validity of the person's claim to the funds or property.

(c) If funds or property are allowed to remain in the possession of the person after demand made by the receiver, that person is strictly liable to the estate for any waste, loss, or damage to or diminution of value of the funds or property retained.

(3) If a person files a pleading alleging a right to retain funds or property as provided in Subsection (1), the receivership court shall hold a subsequent hearing to determine the entitlement of the person to the funds or property claimed by the receiver.

(4) If a person fails to deliver the funds or property or to file the pleading described by Subsection (1) within the 20-day period, the receivership court may issue a summary order:

(a) upon:

(i) petition of the receiver; and

(ii) a copy of the petition being served by the petitioner to that person;

(b) directing the immediate delivery of the funds or property to the receiver; and

(c) finding that the person waived all claims of right to the funds or property.

(5) The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

Enacted by Chapter 309, 2007 General Session

31A-27a-502. Recovery from affiliates.

(1) (a) If a receivership order is entered under this chapter, the receiver appointed under the receivership order may recover on behalf of the insurer from an affiliate as defined in Subsection 31A-1-301(5) the value received by the affiliate at any time during the five years preceding the filing date of the delinquency proceedings.

(b) A person disputing that person's status as an affiliate shall prove by clear and convincing evidence the person's nonaffiliate status.

(c) Recovery from an affiliate is subject to the limitations of Subsections (2) and (6).

(2) If the insurer is a stock corporation, a stock dividend distribution to an affiliate is not recoverable if the recipient shows by a preponderance of the evidence that:

(a) when paid, the stock dividend distribution to an affiliate is lawful and reasonable;

(b) the department had notice to and approved the stock dividend; and

(c) the insurer did not know and could not reasonably have known that the stock dividend distribution to the affiliate might adversely affect the solvency of the insurer.

(3) The maximum amount recoverable under this section is the amount needed to pay all claims under the receivership:

- (a) in excess of all other available recoverable assets; and
- (b) reduced for each recipient affiliate by any amount that the recipient affiliate pays to any receiver under similar laws of other states.

(4) (a) A person who is an affiliate at the time value is received is liable up to the amount of value received by the affiliate.

(b) If two or more affiliates are liable regarding the same value received, they are jointly and severally liable.

(5) If any affiliate liable under Subsection (4) is insolvent or unable to pay within one year, all affiliates at the time the value is received are jointly and severally liable for any resulting deficiency in the amount that would have been recovered from the nonpaying affiliate.

(6) This section does not enlarge the personal liability of a director under existing law.

(7) An action or proceeding under this section may not be commenced after the earlier of:

- (a) six years after the day on which a receiver is appointed; or
- (b) the day on which the receivership is terminated.

Amended by Chapter 297, 2011 General Session

31A-27a-503. Unauthorized postpetition transfers.

(1) Except as otherwise provided in this section, the receiver may avoid a transfer of an interest of the insurer in property, or an obligation incurred by the insurer, that is:

(a) made or incurred after the day on which a petition for receivership is filed; and

(b) not authorized by the receiver and approved by the receivership court.

(2) Except to the extent that a transfer or obligation voidable under this section is otherwise voidable under this chapter, a transferee or obligee of a transfer or obligation described in Subsection (1) has a lien on or may retain, at the option of the receivership court, an interest transferred or may enforce an obligation incurred, as the case may be:

- (a) if the transferee or obligee takes it for value and in good faith; and
- (b) to the extent that the transferee or obligee gave value to the insurer in exchange for the transfer or obligation.

Enacted by Chapter 309, 2007 General Session

31A-27a-504. Voidable preferences and liens.

(1) (a) A preference may be avoided by the rehabilitator or liquidator, if:

- (i) the insurer is insolvent at the time of the transfer;
- (ii) the transfer is made within four months before the day on which the petition is filed;
- (iii) with reference to the transfer, one of the following at the time the transfer is

made has reasonable cause to believe that the insurer is or is about to become insolvent:

- (A) a creditor receiving the transfer;
- (B) a creditor to be benefitted by the transfer; or
- (C) an agent of a creditor described in this Subsection (1)(a)(iii); or
- (iv) the creditor receiving the transfer is an officer, employee, attorney, or other person who is in fact in a position of comparable influence on the insurer to:

- (A) an officer of the insurer;
- (B) a shareholder holding directly or indirectly more than 5% of any class of equity security issued by the insurer; or
- (C) any other person with whom the insurer did not deal at arm's length.

(b) (i) Subject to the other provisions of this Subsection (1)(b), if a preference is voidable, the rehabilitator or liquidator may recover the property or, if the property is converted, the property's value, from any person who receives or converts the property.

(ii) Notwithstanding Subsection (1)(b)(i), the rehabilitator or liquidator may not recover from a bona fide purchaser or lienor of the debtor's transferee for present fair consideration.

(iii) If a bona fide purchaser or lienor gives less than fair consideration, the bona fide purchaser or lienor has a lien upon the property to the extent of the consideration actually given by the bona fide purchaser or lienor.

(c) If a preference by way of lien or security title is voidable, the court may, on due notice, order the lien or title to be preserved for the benefit of the estate, in which event the lien or title passes to the liquidator.

(d) A payment to which Subsection 31A-5-415(2) applies is a preference and is voidable under Subsection (1)(a):

(i) if it is made within the time period specified in Subsection 31A-27a-102(29); and

(ii) except that a payment made by an insurer for the purchase of insurance under Section 16-10a-302 is not a preference.

(2) Section 31A-27a-506 applies to the perfection of a transfer.

(3) Section 31A-27a-506 applies to a lien by a legal or equitable proceeding.

(4) The receiver may not avoid a transfer of property under this section for or because of:

(a) new and contemporaneous consideration;

(b) the payment, within 45 days after the day on which a debt is incurred, of a debt incurred:

(i) in the ordinary course of the business of the insurer; and

(ii) according to normal business terms;

(c) a transfer of a security interest in property:

(i) to enable the insurer to acquire the property; and

(ii) which is perfected within 10 days after the day on which the security interest attaches;

(d) a transfer to or for the benefit of a creditor:

(i) to the extent that after the transfer the creditor gives new value not secured by an unavoidable security interest; and

(ii) on account of which the insurer did not make an unavoidable transfer to or

for the benefit of the creditor; or

(e) a transfer of a perfected security interest in inventory, a receivable, or the proceeds of either, except to the extent that the aggregate of all of those types of transfers to the transferee cause a reduction of the amount by which the debt secured by the security interest exceeds the value of the security interest four months before the date of liquidation or any time subsequent to the liquidation.

(5) (a) The receiver may avoid a transfer of property of the insurer transferred to secure reimbursement of a surety that furnishes a bond or other obligation to dissolve a judicial lien that would have been avoidable by the receiver under Subsection (1)(a).

(b) The liability of the surety under the bond or obligation described in Subsection (5)(a) shall be discharged to the extent of the value of the property recovered by the receiver or the amounts paid to the receiver.

(6) (a) Subject to Subsection (6)(b), the property affected by a lien that is considered voidable under Subsections (1)(a) and (5):

(i) is discharged from the lien; and

(ii) passes to the rehabilitator or liquidator with any of the indemnifying property transferred to or for the benefit of a surety.

(b) Notwithstanding Subsection (6)(a), the court may:

(i) on due notice, order the lien to be preserved for the benefit of the estate; and

(ii) direct that a conveyance be executed that is adequate to evidence the title of the rehabilitator or liquidator.

(7) (a) The court has jurisdiction of any proceeding by the rehabilitator or liquidator, to hear and determine the rights of any parties under this section.

(b) Reasonable notice of any hearing in a proceeding described in Subsection (7)(a) shall be given to all parties in interest, including the obligee of a releasing bond or other similar obligation.

(c) If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien:

(i) the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien; and

(ii) if the value of the property or lien is less than the amount for which the property is an indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court:

(A) to the rehabilitator or liquidator; and

(B) within a reasonable time fixed by the court.

(8) The liability of a surety under a releasing bond or other similar obligation is discharged to the extent of the value of:

(a) the indemnifying property recovered;

(b) the indemnifying lien nullified and avoided; or

(c) if the property is retained under Subsection (7), the amount paid to the rehabilitator or liquidator.

(9) If a creditor is preferred and afterward in good faith gives the insurer further credit, without security of any kind, for property that becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition shall be set off against the preference which would otherwise be recoverable from the

creditor.

(10) (a) If an insurer, directly or indirectly, pays money or transfers property within four months before the day on which a successful petition for rehabilitation or liquidation is filed under this chapter or at any time in contemplation of a proceeding to rehabilitate or liquidate the insurer, to an attorney for services rendered or to be rendered, the transaction:

(i) (A) may be examined by the court on its own motion; or

(B) shall be examined by the court on petition of the rehabilitator or liquidator;

and

(ii) shall be held valid only to the extent that the transfer is a reasonable amount as determined by the court.

(b) The amount in excess of the amount held valid under Subsection (10)(a), may be recovered by the rehabilitator or liquidator for the benefit of the estate.

(c) If the attorney meets the description in Subsection (1)(a)(iv), Subsection (1)(a)(iv) applies in place of this Subsection (10).

(11) (a) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving a preference when that person has reasonable cause to believe that the insurer is or is about to become insolvent at the time of the preference, is personally liable to the rehabilitator or liquidator for the amount of the preference.

(b) It is permissible to infer that there is "reasonable cause to so believe" if the transfer is made within four months before the date on which a successful petition for rehabilitation or liquidation is filed.

(c) A person receiving any property from the insurer or for the benefit of the insurer as a preference which is voidable under Subsection (1)(a) is:

(i) personally liable for that transfer and property; and

(ii) bound to account to the rehabilitator or liquidator.

(d) This Subsection (11) does not prejudice any other claim by the rehabilitator or liquidator against any person.

Enacted by Chapter 309, 2007 General Session

31A-27a-505. Avoidance of property title transfers.

(1) The rehabilitator or liquidator has the creditor's rights described in this Subsection (1), without regard to any knowledge of the rehabilitator or liquidator or any creditor.

(a) (i) The rehabilitator or liquidator is considered to:

(A) have extended credit to the insurer on the day on which the rehabilitation or liquidation petition is filed; and

(B) have obtained on the day described in Subsection (1)(a)(i) a judicial lien on all the insurer's property on which a creditor under a contract could obtain a judicial lien.

(ii) The rehabilitator or liquidator:

(A) may avoid a transfer that would be avoidable by the type of creditor described in this Subsection (1)(a); and

(B) has all the other rights and powers of the type of creditor described in this Subsection (1)(a).

(b) (i) The rehabilitator or liquidator is considered to:

- (A) have extended credit to the insurer on the day on which the rehabilitation or liquidation petition filed; and
- (B) have obtained on the day described in this Subsection (1)(b)(i), with respect to that credit extension, an execution against the insurer on that same date that is returned unsatisfied.

(ii) The rehabilitator or liquidator:

- (A) may avoid a transfer that would be avoidable by the type of creditor described in this Subsection (1)(b); and
- (B) has all the other rights and powers of the type of creditor described in this Subsection (1)(b).

(c) The rehabilitator or liquidator:

- (i) is considered to be a bona fide purchaser of the insurer's real property on the day on which the rehabilitation or liquidation petition is filed; and
- (ii) has the rights and powers of a bona fide purchaser to avoid other transfers of the insurer's realty.

(2) (a) The rehabilitator or liquidator may avoid a transfer of an interest of the insurer in property or an obligation incurred by the insurer that is voidable under applicable law by a creditor holding an unsecured claim.

(b) This Subsection (2) does not apply to secured claims.

(3) (a) Except as provided in Subsections (3)(b) and (c), the rehabilitator or liquidator may avoid a transfer of property of the estate that:

- (i) occurs after the day on which the petition for rehabilitation or liquidation is filed; and
- (ii) is not authorized under this chapter or by the court.

(b) (i) Subject to Subsection (3)(b)(ii), a transfer is valid against the rehabilitator or liquidator to the extent of any value, including services if it occurs:

- (A) after the day on which the petition is filed; and
- (B) before the day on which the order for rehabilitation or liquidation is entered.

(ii) The value described in Subsection (3)(b)(i) does not include the satisfaction or securing of a debt:

- (A) that arises before the day on which the petition is filed;
- (B) which is given after the date described in this Subsection (3)(b) in exchange for the transfer; and
- (C) notwithstanding the transferee's knowledge or lack of knowledge of the petition.

(c) (i) Subject to Subsection (3)(c)(ii), the rehabilitator or liquidator may not avoid a transfer of real property under Subsection (3)(a) to:

- (A) a good faith purchaser:
 - (I) if the good faith purchaser is without knowledge of the petition for rehabilitation or liquidation; and
 - (II) for present fair consideration; or
- (B) a purchaser at a judicial sale.

(ii) Notwithstanding Subsection (3)(c)(i), the rehabilitator or liquidator may avoid a transfer of real property under Subsection (3)(a) if a copy of the petition is filed in the office of the county recorder before the transfer is so far perfected that a bona fide

purchaser of the property against whom applicable law permits that type of transfer to be perfected cannot acquire an interest that is superior to the interest of the good faith purchaser or judicial sale purchaser.

(iii) Unless a copy of the petition is filed before the transfer is perfected, a good faith purchaser of real property under a transfer which the rehabilitator or liquidator may avoid under this section has a lien on the property transferred:

(A) if the good faith purchaser:

(I) is without knowledge of the petition for rehabilitation or liquidation at the time of the transfer; and

(II) pays less than present fair consideration; and

(B) to the extent of the present consideration given.

(4) An action or proceeding under Subsection (1) or (2) may not be commenced after the earlier of:

(a) two years after the day on which a rehabilitator is appointed under Section 31A-27a-301 or a liquidator is appointed under Section 31A-27a-401; or

(b) the day on which the rehabilitation is terminated under Subsection 31A-27a-304(3) or the liquidation is terminated under Section 31A-27a-802.

(5) An action or proceeding under Subsection (3) may not be commenced after the earlier of:

(a) two years after the day on which the transfer sought to be avoided is made; or

(b) the day on which the rehabilitation is terminated under Subsection 31A-27a-304(3) or the liquidation is terminated under Section 31A-27a-802.

Enacted by Chapter 309, 2007 General Session

31A-27a-506. Fraudulent transfers and obligations.

(1) For purposes of this section:

(a) A "transfer":

(i) is made when the transfer is so perfected that a bona fide purchaser from the insurer against whom applicable law permits the transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in the property of the transferee; or

(ii) if the transfer is not perfected as provided in Subsection (1)(a)(i) before the commencement of the delinquency proceeding, is considered made immediately before the day on which the initial filing of the petition commencing delinquency proceedings is filed.

(b) "Value" means property or satisfaction or securing of a present or antecedent debt of the insurer.

(2) (a) If the conditions of Subsection (2)(b) are met, the receiver may avoid the following:

(i) a transfer of an interest of the insurer in property;

(ii) a reinsurance transaction; or

(iii) an obligation incurred by an insurer.

(b) Subsection (2)(a) applies if:

(i) the transfer or obligation is made or incurred on or within two years before the

day on which the initial filing of a petition commencing delinquency proceedings is filed under this chapter; and

(ii) the insurer voluntarily or involuntarily:

(A) makes the transfer or incurs the obligation with actual intent to hinder, delay, or defraud a person to which the insurer is or becomes indebted on or after the day on which the transfer is made or the obligation is incurred; or

(B) receives less than a reasonably equivalent value in exchange for the transfer or obligation.

(3) Except to the extent that a transfer or obligation voidable under this section is voidable under other provisions of this chapter, a transferee or obligee of a transfer or obligation voidable under this section that takes for value and in good faith:

(a) as the case may be:

(i) has a lien on or may retain any interest transferred; or

(ii) may enforce any obligation incurred; and

(b) to the extent that the transferee or obligee gave value to the insurer in exchange for the transfer or obligation.

(4) If a reinsurance transaction is avoided under this section:

(a) the receiver shall tender to the reinsurer the value of any consideration transferred to the insurer in connection with the transaction less the amount of matured and liquidated liabilities owing by the reinsurer to the estate; and

(b) the parties shall be returned to their relative positions before the implementation of the transaction avoided.

Enacted by Chapter 309, 2007 General Session

31A-27a-507. Receiver as lien creditor.

(1) The receiver may avoid a transfer of or lien on the property of, or obligation incurred by, an insurer that the insurer or a policyholder, creditor, member, or stockholder of the insurer:

(a) may have avoided without regard to any knowledge of:

(i) the receiver;

(ii) the commissioner;

(iii) the insurer; or

(iv) a policyholder, creditor, member, or stockholder of the insurer; and

(b) whether or not a policyholder, creditor, member, or stockholder described in this Subsection (1) exists.

(2) The receiver is considered a creditor without knowledge for purposes of pursuing claims under:

(a) Title 25, Chapter 6, Uniform Fraudulent Transfer Act; or

(b) similar provisions of state or federal law.

Enacted by Chapter 309, 2007 General Session

31A-27a-508. Liability of transferee.

(1) Except as otherwise provided in this section, to the extent that the receiver obtains an order pursuant to Section 31A-27a-501, or avoids a transfer under Section

31A-27a-502, 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507, the receiver may recover the property transferred, or the value of the property, from:

(a) the initial transferee of the transfer or the entity for whose benefit the transfer is made; or

(b) subject to Subsection (2), an immediate or mediate transferee of the initial transferee.

(2) The receiver may not recover under Subsection (1)(b) from:

(a) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt:

(i) in good faith; and

(ii) without knowledge of the voidability of the transfer avoided; or

(b) an immediate or mediate good faith transferee of the transferee.

(3) A transfer avoided in accordance with this chapter is preserved for the benefit of the receivership estate, but only with respect to property of the insurer.

(4) In addition to the remedies specifically provided in Sections 31A-27a-501, 31A-27a-502, 31A-27a-503, 31A-27a-504, 31A-27a-506, and 31A-27a-507 and Subsection (1), if the receiver is successful in establishing a claim to the property or any part of the property, the receiver may recover judgment for the following:

(a) rental for the use of tangible property from the later of:

(i) the day on which the receivership order is entered; or

(ii) the date of the transfer; and

(b) in the case of funds or intangible property:

(i) the greater of:

(A) the actual interest;

(B) income earned by the property; or

(C) interest at the statutory rate for judgments; and

(ii) from the later of:

(A) the day on which the receivership order is entered; or

(B) the date of the transfer.

(5) In an action pursuant to this section, the receivership court may allow the receiver to seek recovery of the property involved or its value.

(6) In an action pursuant to Sections 31A-27a-501, 31A-27a-502, 31A-27a-503, 31A-27a-504, 31A-27a-506, 31A-27a-507, and 31A-27a-510:

(a) the receiver has the burden of proving the avoidability of a transfer; and

(b) the person against whom recovery or avoidance is sought has the burden of proving the nature and extent of any affirmative defense.

Enacted by Chapter 309, 2007 General Session

31A-27a-509. Claims of holders of void or voidable rights.

(1) (a) The receiver may disallow a claim of a creditor who receives or acquires a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter, unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance.

(b) If an avoidance is effected by a proceeding in which a final judgment is entered, a creditor's claim is not allowed unless the money is paid or the property is

delivered to the receiver within 30 days from the day on which the final judgment is entered, except that the receivership court may allow further time if there is an appeal or other continuation of the proceeding.

(2) A claim allowable under Subsection (1) by reason of an avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused late filing under Subsection 31A-27a-601(2) if filed within:

- (a) 30 days from the date of the avoidance; or
- (b) the further time allowed by the receivership court under Subsection (1).

Enacted by Chapter 309, 2007 General Session

31A-27a-510. Setoffs.

(1) (a) A mutual debt or mutual credit shall be set off and the balance only allowed or paid:

(i) whether arising out of one or more contracts between the insurer and another person in connection with an action or proceeding under this chapter; and

(ii) except as provided in Subsection (2) and Sections 31A-27a-513 and 31A-27a-514.

(b) An obligation arising out of the termination of a life, disability income, or long-term care reinsurance contract pursuant to Section 31A-27a-513 may be set off against other debts and credits arising out of a contract between the insurer and the reinsurer.

(2) (a) A setoff is not allowed after the commencement of a delinquency proceeding under this chapter in favor of any person if:

(i) the claim against the insurer is disallowed;

(ii) the claim against the insurer is purchased by or transferred to the person:

(A) on or after the day on which the receivership petition is filed; or

(B) within 120 days preceding the day on which the receivership petition is filed;

(iii) the obligation of the insurer is owed to an affiliate or entity other than the person, absent written assignment of the obligation made more than 120 days before the day on which the petition for receivership is filed;

(iv) the obligation of the person is owed to an affiliate or entity other than the insurer, absent written assignment of the obligation made more than 120 days before the day on which the petition for receivership is filed;

(v) the obligation of the person is:

(A) to pay:

(I) an assessment levied against a member or subscriber of the insurer; or

(II) a balance upon a subscription to the capital stock of the insurer; or

(B) in any other way in the nature of a capital contribution;

(vi) an obligation between the person and the insurer arises out of a transaction by which either the person or the insurer:

(A) assumes a risk or obligation from the other party; and

(B) then cedes back to that party substantially the same risk or obligation;

(vii) the obligation of the person arises out of an avoidance action taken by the receiver; or

(viii) the obligation of the insured is for the payment of earned premiums or retrospectively rated earned premiums in accordance with Section 31A-27a-514.

(b) Notwithstanding Subsection (2)(a)(vi), the receiver may permit a setoff if, in the receiver's discretion, a setoff is appropriate because of specific circumstances relating to a transaction.

(3) The receiver may avoid pursuant to Sections 31A-27a-504, 31A-27a-506, and 31A-27a-507 and subject to defenses under those sections, a setoff that occurs before the commencement of the delinquency proceeding under this chapter if the setoff would otherwise be disallowed pursuant to Subsection (2).

Enacted by Chapter 309, 2007 General Session

31A-27a-511. Assessments.

(1) As soon as practicable but not more than four years from the day on which an order of receivership of an insurer issuing assessable policies is entered, the receiver shall make a report to the receivership court setting forth:

- (a) the reasonable value of the assets of the insurer;
- (b) the insurer's probable total liabilities;
- (c) the probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
- (d) a recommendation as to:
 - (i) whether or not an assessment should be made; and
 - (ii) what amount of assessment.

(2) (a) Upon the basis of the report provided in Subsection (1), including any supplement or amendment to the report, the receivership court may approve, solely on application by the receiver, one or more assessments against all members of the insurer who are subject to assessment.

(b) An order approving an assessment under this Subsection (2) shall provide instructions regarding:

- (i) notice of the assessment;
- (ii) deadlines for payment; and
- (iii) other instructions to the receiver for collection of the assessment.

(3) Subject to any applicable legal limit on an ability to assess and with due regard given to assessments that cannot be collected economically, the aggregate assessment shall be for the amount by which the sum of the following exceeds the value of existing assets:

- (a) probable liabilities;
- (b) the expenses of administration; and
- (c) the estimated cost of collection of the assessment.

(4) (a) After levy of an assessment under Subsection (2), the receiver shall petition the receivership court for an order directing each member who has not paid the assessment pursuant to the levy to show cause why a judgment for the failure to pay the assessment should not be entered.

(b) At least 20 days before the return day of the order to show cause described in Subsection (4)(a), the receiver shall give notice of the order to show cause by:

(i) publication or by first-class mail to each member liable on the assessment mailed to the member's last-known address as it appears on the insurer's records; or

(ii) such other method of notification as the receivership court may direct.

(c) Failure of the member or subscriber to receive the notice of the assessment or of the order to show cause either within the time specified in the order or at all, is no defense in a proceeding to collect the assessment.

(5) If a member does not appear and serve verified objections upon the receiver on or before the return day of the order to show cause under Subsection (4):

(a) the receivership court shall make an order adjudging the member liable for the sum of:

(i) the amount of the assessment against the member pursuant to Subsection (4); and

(ii) the costs; and

(b) the receiver has a judgment against the member for the amount described in Subsection (5)(a).

(6) If on or before the return day in the order to show cause described in Subsection (4) the member appears and serves verified objections on the receiver, the receivership court may:

(a) (i) hear and determine the matter; or

(ii) appoint a referee to hear the matter; and

(b) make such order as the facts warrant.

(7) The receiver may enforce an order or collect a judgment under Subsection (5) by any lawful means.

(8) An assessment of a subscriber or member of an insurer made by the receiver is prima facie correct if it is pursuant to the order of receivership court:

(a) fixing the aggregate amount of the assessment against all members or subscribers; and

(b) approving the classification and formula made by the receiver under this section.

(9) A claim filed by an assessee who fails to pay an assessment, after the conclusion of a legal action by the assessee objecting to the assessment, is considered a late filed claim under Section 31A-27a-701.

Enacted by Chapter 309, 2007 General Session

31A-27a-512. Reinsurer's liability.

(1) (a) Except as otherwise provided in this chapter, the amount recoverable by the receiver from a reinsurer may not be reduced as a result of a delinquency proceeding with a finding of insolvency, regardless of any provision in the reinsurance contract or other agreement.

(b) An agreement, written, oral, or otherwise, may not be enforced to the extent it is in conflict, or not in strict compliance with this section.

(c) Except as expressly provided in this section, a person other than the receiver whether as a creditor, third party beneficiary, or otherwise does not have a direct right to reinsurance proceeds from any reinsurer of the insolvent insurer:

(i) on the basis of any written or oral agreement; or

(ii) pursuant to an action or cause of action seeking any equitable or legal remedy.

(d) This section applies to all the insurer's reinsurance contracts including:

- (i) treaty reinsurance;
- (ii) quota share reinsurance;
- (iii) facultative reinsurance; or
- (iv) a fronting or captive reinsurance arrangement.

(2) Except as otherwise provided in Subsection (9), the amount recoverable by the liquidator from a reinsurer is payable under one or more contracts reinsured by the reinsurer on the basis of:

(a) proof of payment of the insured claim by an affected guaranty association, the insurer, or the receiver, to the extent of the payment; or

(b) the allowance of the claim pursuant to:

- (i) Section 31A-27a-608;
- (ii) an order of the receivership court; or
- (iii) a plan of rehabilitation.

(3) If the insurer takes credit for a reinsurance contract in a filing or submission made to the commissioner and the reinsurance contract does not contain the provisions required with respect to the obligations of reinsurers in the event of insolvency of the reinsured, the reinsurance contract is considered to contain the provisions required with respect to:

(a) the obligations of reinsurers in the event of insolvency of the reinsured in order to obtain credit for reinsurance; or

(b) other applicable statutes.

(4) A reinsurance contract that under Subsection (3) is considered to contain certain provisions, is considered to contain a provision that:

(a) in the event of insolvency and the appointment of a receiver, the reinsurance obligation is payable to the ceding insurer or to its receiver without diminution because of the insolvency or because the receiver fails to pay all or a portion of the claim;

(b) payment shall be made upon either:

(i) to the extent of the payment, proof of payment of the insured claim by an affected guaranty association, the insurer, or the receiver; or

(ii) the allowance of the claim pursuant to:

- (A) Section 31A-27a-608;
- (B) an order of the receivership court; or
- (C) a plan of rehabilitation; and

(c) if a reinsurer does not pay the amount billed by the receiver within 60 days after the mailing by the receiver, interest on the unpaid billed amount will begin to accrue at the statutory legal rate provided in Subsection 15-1-1(2), except that all or a portion of the interest may be waived as part of an arbitration proceeding.

(5) (a) The receiver shall notify in writing, in accordance with the terms of the contract, each reinsurer obligated in relation to the claim or the pendency of a claim against the reinsured company.

(b) The receiver's failure to give notice of a pending claim pursuant to a provision in a reinsurance contract:

- (i) does not excuse the obligation of the reinsurer unless the reinsurer is

prejudiced by the receiver's failure; and

(ii) if the reinsurer is prejudiced, reduces the reinsurer's obligations only to the extent of the prejudice.

(c) A reinsurer may interpose, at its own expense, in a proceeding in which a claim is to be adjudicated, any one or more defenses that the reinsurer considers available to the reinsured company or its receiver.

(6) The entry of an order of rehabilitation or liquidation:

(a) may not be considered a breach or an anticipatory breach of a reinsurance contract; and

(b) is not grounds for retroactive revocation or retroactive cancellation of a reinsurance contract by the reinsurer.

(7) (a) If a reinsurance payment to a receiver of a ceding insurer is later determined to be a payment in excess of the amounts actually due to the receiver, the excess shall be:

(i) credited against future payments due to the receiver; or

(ii) repaid to the reinsurer as an administrative expense of the estate pursuant to Subsection 31A-27a-701(2)(g).

(b) A repayment under this Subsection (7) may be limited on the basis of the property remaining in the estate.

(8) (a) Subject to Subsection (1):

(i) except as provided in Subsection (8)(a)(ii):

(A) a payment made by the reinsurer directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate; and

(B) a payment made by the reinsurer shall be made directly to the ceding insurer or its receiver;

(ii) Subsection (8)(a)(i) does not apply when:

(A) the reinsurance contract or other written agreement to which the insured, ceding insurer, and reinsurer are all parties:

(I) specifically provides another payee, other than an affiliate of the ceding insurer or reinsurer, of the reinsurance in the event of the insolvency or receivership of the ceding insurer; and

(II) the provision described in this Subsection (8)(a)(ii)(A) is contained in:

(Aa) the reinsurance contract as it is written on the day on which the reinsurance contract is initially executed; or

(Bb) the other written agreement as it is written on the day on which the initial policy is issued;

(B) the reinsurance contract, as it is written on the day on which the reinsurance contract is initially executed, contains a provision where the assuming insurer with the consent of the direct insured and the ceding insurer assumes all policy obligations of the ceding insurer:

(I) as a direct obligation of the assuming insurer to the payees under the policies; and

(II) in substitution for the entire obligations of the ceding insurer to the payees; or

(C) a life and health insurance guaranty association makes the election to succeed to the rights and obligations of the insolvent insurer under a contract of

reinsurance:

(I) in accordance with:

(Aa) Section 31A-27a-513; or

(Bb) the life and health guaranty association laws of its domiciliary state; or

(II) pursuant to other applicable law, rule, order, or assignment contract; and

(iii) in the circumstances described in Subsection (8)(a)(ii)(C), a payment shall be made directly to or at the direction of the guaranty association.

(b) Both the receiver and the reinsurer are entitled to recover from a person, other than the receiver or a guaranty association, who unsuccessfully makes a claim directly against the reinsurer the following incurred in preventing any collection by that person:

(i) the person's attorney fees; and

(ii) expenses.

(9) This chapter may not be construed to authorize the liquidator or any other entity to compel payment from a nonlife reinsurer:

(a) on the basis of estimated incurred but not reported losses, loss expenses, or case reserves for unpaid losses and loss expenses, except under Sections 31A-27a-515 and 31A-27a-516; and

(b) with respect to a claim allowed in accordance with Section 31A-27a-605.

Enacted by Chapter 309, 2007 General Session

31A-27a-513. Reinsurance continuation and termination.

(1) For purposes of this section:

(a) "Coverage date" is the day on which an order of liquidation is entered.

(b) "Election date" is the day on which an affected guaranty association elects to assume under this section the rights and obligations of a ceding insurer that relate to a policy or annuity covered, in whole or in part, by the affected guaranty association.

(2) A contract reinsuring a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity issued by a ceding insurer that is placed in rehabilitation proceedings pursuant to this chapter shall be continued or terminated pursuant to:

(a) the terms or conditions of each contract; and

(b) this section.

(3) A contract reinsuring a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity issued by a ceding insurer that is placed into liquidation pursuant to this chapter shall be continued, subject to this section, unless:

(a) the contract is terminated pursuant to the contract's terms before the coverage date; or

(b) the contract is terminated pursuant to the order of liquidation, in which case Subsection (10) applies.

(4) (a) (i) At any time within 180 days of the coverage date, an affected guaranty association covering a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity, in whole or in part, may elect to assume the rights and obligations of the ceding insurer that relate to the policy or annuity

covered, in whole or in part, by the affected guaranty association, under one or more reinsurance contracts between the insolvent insurer and the insolvent insurer's reinsurers selected by the affected guaranty association.

(ii) An assumption under this Subsection (4)(a) is effective as of the coverage date.

(iii) The election described in this Subsection (4)(a) is made by the affected guaranty association or a nationally recognized association of guaranty associations that is designated by the affected guaranty association to act on the affected guaranty association's behalf for purposes of this Subsection (4)(a) by sending written notice, return receipt requested, to the affected reinsurers.

(b) (i) To facilitate the earliest practicable decision about whether to assume a contract of reinsurance and to protect the financial position of the estate, the receiver and each reinsurer of the ceding insurer shall make available the information described in Subsection (4)(b)(ii):

(A) upon request to an affected guaranty association; or

(B) to a nationally recognized association of guaranty associations that is designated by the affected guaranty association to act on behalf of the affected guaranty associations for purposes of this Subsection (4) as soon as possible after commencement of formal delinquency proceedings.

(ii) The information described in Subsection (4)(b)(i) is:

(A) copies of all in-force contracts of reinsurance;

(B) all records related to in-force contracts of reinsurance relevant to the determination of whether the in-force contracts of reinsurance should be assumed; and

(C) notice of:

(I) a default under the in-force contracts of reinsurance; or

(II) a known event or condition that with the passage of time could become a default under the in-force contracts of reinsurance.

(c) Subsections (4)(c)(i) through (vi) apply to a reinsurance contract assumed by an affected guaranty association under this Subsection (4).

(i) The guaranty association is responsible for the following that relates to a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in part, by the guaranty association:

(A) all unpaid premiums due under a reinsurance contract, for the periods both before and after the coverage date; and

(B) the performance of all other obligations to be performed after the coverage date.

(ii) The affected guaranty association:

(A) may charge a policy of insurance or annuity covered in part by the affected guaranty association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the affected guaranty association; and

(B) if it imposes a charge under this Subsection (4)(c)(ii), shall provide notice and an accounting of the charge to the liquidator.

(iii) The affected guaranty association is entitled to any amount payable by the reinsurer under the reinsurance contract with respect to a loss or event:

(A) that:

(I) occurs in a period on or after the coverage date; and

(II) relates to a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in part, by the affected guaranty association; and

(B) except that upon receipt of the amount, the affected guaranty association is obliged to pay to the beneficiary under the insurance policy or annuity on account of which the amount is paid a portion of the amount equal to the lesser of:

(I) the amount received by the affected guaranty association; and

(II) an amount calculated by:

(Aa) determining the excess of the amount received by the affected guaranty association over the amount equal to the benefits paid by the affected guaranty association on account of the policy or annuity; and

(Bb) subtracting the retention of the insurer applicable to the loss or event.

(iv) (A) Within 30 days following the election date, the affected guaranty association and each reinsurer under a contract assumed by the affected guaranty association shall calculate the net balance due to or from the affected guaranty association under each reinsurance contract as of the election date with respect to a policy or annuity covered, in whole or in part, by the affected guaranty association.

(B) The calculation required by Subsection (4)(c)(iv)(A) shall give full credit to all items paid by the insurer, the insurer's receiver, or the reinsurer before the election date.

(C) The reinsurer shall pay the receiver an amount due for a loss or event before the coverage date, subject to any setoff for premiums unpaid for periods before the coverage date.

(D) Within five days of the completion of the calculation required by Subsection (4)(c)(iv)(A), the affected guaranty association or reinsurer shall pay any balance due the other after completion of the calculation.

(E) A dispute over an amount due to either the affected guaranty association or the reinsurer shall be resolved by arbitration:

(I) pursuant to the terms of the affected reinsurance contract; or

(II) if the affected reinsurance contract contains no arbitration clause, as provided in Subsection (10)(d).

(v) If the receiver receives an amount due the affected guaranty association pursuant to Subsection (4)(c)(iii), the receiver shall remit that amount to the affected guaranty association as promptly as practicable.

(vi) If the affected guaranty association or the receiver on the affected guaranty association's behalf, within 60 days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in part, by the affected guaranty association, the reinsurer may not:

(A) terminate the reinsurance contract for failure to pay premiums, insofar as the reinsurance contract relates to a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity covered, in whole or in part, by the affected guaranty association; and

(B) set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the affected guaranty association, against amounts due the affected guaranty association.

(5) (a) If pursuant to court approval under Section 31A-27a-402 a receiver continues a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity in force following an order of liquidation, and the policy of insurance or annuity is not covered in whole or in part by one or more affected guaranty associations, the receiver may elect to assume the rights and obligations of the ceding insurer under one or more of the reinsurance contracts that relate to the policy or annuity:

(i) within 180 days of the coverage date; and

(ii) if the contract is not terminated as set forth in Subsection (2).

(b) The election described in this Subsection (5) shall be made by sending written notice, return receipt requested, to the affected reinsurers.

(c) If the election described in this Subsection (5) is made:

(i) payment of premiums on the reinsurance contract for the policy or annuity, for periods both before and after the coverage date, shall be chargeable against the estate as a Class 1 administrative expense; and

(ii) amounts paid by the reinsurer on account of losses on the policy or annuity shall be to the estate of the insolvent insurer.

(6) During the period beginning on the coverage date and ending on the election date:

(a) (i) neither the affected guaranty association nor the reinsurer has any rights or obligations under a reinsurance contract that the affected guaranty association has the right to assume under Subsection (4), whether for a period before or after the coverage date;

(ii) (A) with respect to the period after the coverage date, neither the receiver nor the reinsurer has any rights or obligations under a reinsurance contract that the receiver has the right to assume under Subsection (5); and

(B) with respect to the period before the coverage date, the rights and obligations of the affected guaranty association and the reinsurer remain unchanged; and

(iii) the reinsurer, the receiver, and an affected guaranty association shall, to the extent practicable, provide each other data and records reasonably requested; and

(b) once the affected guaranty association or the receiver, as the case may be, elects or declines to elect to assume a reinsurance contract, the parties' rights and obligations are governed by Subsection (4), (5), or (10), as applicable.

(7) (a) If an affected guaranty association does not elect to assume a reinsurance contract by the election date pursuant to Subsection (4), the affected guaranty association has no rights or obligations, in each case for periods both before and after the coverage date, with respect to the reinsurance contract.

(b) If a receiver does not elect to assume a reinsurance contract by the election date pursuant to Subsection (5), the receiver and the reinsurer:

(i) retain their respective rights and obligations with respect to the reinsurance contract for the period before the coverage date; and

(ii) have no rights or obligations to each other for the period after the coverage date, except as provided in Subsection (10).

(c) (i) If an affected guaranty association or the receiver, as the case may be, does not elect to assume a reinsurance contract by the election date, the reinsurance

contract terminates retroactively effective on the coverage date.

(ii) A reinsurance contract covering a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity that is terminated pursuant to Section 31A-27a-402 terminates effective on the coverage date.

(iii) Subsection (10) applies to a reinsurance contract described in Subsection (7)(c)(i) or (ii).

(8) (a) Subject to Subsection (8)(b), when a life insurance policy, disability income insurance policy, long-term care insurance policy, an annuity, or guaranty association obligation with respect to that policy or annuity is transferred to an assuming insurer, reinsurance on the policy or annuity may also be transferred:

(i) by the affected guaranty association, in the case of a contract assumed under Subsection (4); or

(ii) by the receiver, in the case of a contract assumed under Subsection (5).

(b) A transfer under Subsection (8)(a), is subject to the following:

(i) unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred may not cover a new policy of insurance or new annuity in addition to those transferred;

(ii) the obligations described in Subsections (4) and (5) do not apply with respect to matters arising after the effective date of the transfer; and

(iii) notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than 30 days before the effective date of the transfer.

(9) (a) This section shall, to the extent provided in this chapter, supersede a law or an affected reinsurance contract that provides for or requires a payment of reinsurance proceeds on account of a loss or event:

(i) that occurs in a period after the coverage date; and

(ii) to the receiver of the insolvent insurer or to any other person.

(b) The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contract with respect to a loss or event that occurs in a period before the coverage date, subject to this chapter including applicable setoff provisions.

(10) If a contract reinsuring a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity is terminated pursuant to this chapter, the procedures of this Subsection (10) apply.

(a) The reinsurer and the receiver shall, upon written notice to the other party to the reinsurance contract no later than 30 days after the receipt by the reinsurer of notice of termination, commence a mandatory negotiation and arbitration procedure in accordance with this Subsection (10).

(b) (i) Each party shall appoint an actuary to determine an estimated sum due as a result of the termination of the reinsurance contract calculated in a way expected to make the parties economically indifferent as to whether the reinsurance contract continues or terminates, giving due regard to the economic effects of the insolvency.

(ii) The estimated sum described in this Subsection (10)(b) shall:

(A) take into account the present value of future cash flows expected under the reinsurance contract; and

(B) be based on a gross premium valuation of net liability using current assumptions:

(I) that reflect postinsolvency experience expectations, with no additional margins;

(II) that are net of any amounts payable and receivable; and

(III) with a market value adjustment to reflect premature sale of assets to fund the settlement.

(c) (i) Within 90 days of the day on which the written request pursuant to Subsection (10)(a) is made, each party shall provide the other party with:

(A) its estimate of the sum due as a result of the termination of the reinsurance contract; and

(B) all relevant documents and other information supporting the estimate.

(ii) The parties shall make a good faith effort to reach agreement on the sum due.

(d) (i) If the parties are unable to reach agreement within 90 days following the day on which the materials required in Subsection (10)(c) are submitted, either party may initiate arbitration proceedings:

(A) as provided in the reinsurance contract; or

(B) if the reinsurance contract does not contain an arbitration clause, pursuant to this Subsection (10)(d) by providing the other party with a written demand for arbitration.

(ii) Arbitration under Subsection (10)(d)(i)(B) shall be conducted pursuant to the following procedures:

(A) Venue for the arbitration shall be within the county of the court's jurisdiction or another location agreed to by the parties.

(B) Within 30 days of the responding party's receipt of the arbitration demand, each party shall appoint an arbitrator who is:

(I) a disinterested active or retired officer or executive of a life insurance or reinsurance company; or

(II) other professional with no less than 10 years experience in or relating to the field of life insurance or life reinsurance.

(C) The two arbitrators appointed under Subsection (10)(d)(ii)(B) shall appoint an independent, impartial, disinterested umpire who is an:

(I) active or retired officer or executive of a life insurance or reinsurance company; or

(II) other professional with no less than 10 years experience in the field of life insurance or life reinsurance.

(D) If the arbitrators appointed under Subsection (10)(d)(ii)(B) are unable to agree on an umpire:

(I) each arbitrator shall provide the other with the names of three qualified individuals;

(II) each arbitrator shall strike two names from the other's list; and

(III) the umpire shall be chosen by drawing lots from the remaining individuals.

(E) Within 60 days following the day on which the umpire is appointed, each party shall, unless otherwise ordered by the arbitration panel, submit to the arbitration panel:

(I) the party's estimates of the sum due as a result of the termination of the reinsurance contract; and

- (II) all relevant documents and other information supporting the estimate.
- (F) The time periods set forth in this Subsection (10)(d)(ii) may be extended upon mutual agreement of the parties.
- (G) The arbitration panel has all powers necessary to conduct the arbitration proceedings in a fair and appropriate manner, including the power to:
 - (I) request additional information from the parties;
 - (II) authorize discovery;
 - (III) hold hearings; and
 - (IV) hear testimony.
- (H) The arbitration panel may, if the arbitration panel considers it necessary, appoint one or more independent actuarial experts, the expense of which shall be shared equally between the parties.
- (I) An arbitration panel considering the matters set forth in this Subsection (10)(d) shall:
 - (I) apply the standards set forth in Subsection (10)(b); and
 - (II) issue a written award specifying a net settlement amount due from one party or the other as a result of the termination of the reinsurance contract.
- (e) The supervising court shall confirm an award issued under Subsection (10)(d)(ii)(I) absent proof of statutory grounds for vacating or modifying arbitration awards under the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq.
- (f) (i) If the net settlement amount agreed or awarded pursuant to this Subsection (10) is payable by the reinsurer, the reinsurer shall pay the amount due to the estate subject to any applicable setoff under Section 31A-27a-510.
- (ii) If the net settlement amount agreed or awarded pursuant to this Subsection (10) is payable by the insurer, the reinsurer is considered to have a timely filed claim against the estate for that amount, which claim shall be paid pursuant to the priority established in Subsection 31A-27a-701(2)(f).
- (iii) A guaranty association:
 - (A) is not entitled to receive the net settlement amount, except to the extent it is entitled to share in the estate assets as creditors of the estate; and
 - (B) has no responsibility for the net settlement amount.
- (11) (a) Except as otherwise provided in this section, this section does not alter or modify the terms and conditions of a reinsurance contract.
- (b) This section does not abrogate or limit any rights of a reinsurer to claim that it is entitled to rescind a reinsurance contract.
- (c) This section does not give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract.
- (d) This section does not limit or affect any guaranty association's rights as a creditor of the estate against the assets of the estate.
- (e) This section does not apply to a reinsurance agreement covering property or casualty risks.

Amended by Chapter 345, 2008 General Session

31A-27a-514. Recovery of premiums owed.

(1) (a) An insured shall pay any unpaid earned premium or retrospectively rated premium due the insurer:

- (i) directly to the receiver; or
- (ii) to an agent that pays or is obligated to pay the receiver on behalf of the insured.

(b) (i) Premium on surety business is considered earned at inception if no policy term can be determined.

(ii) All premium other than that described in Subsection (1)(b)(i) is considered earned and is prorated equally over the determined policy term, regardless of any provision in the bond, guaranty, contract, or other agreement.

(2) (a) A person, other than the insured, responsible for the remittance of a premium, shall turn over to the receiver any unpaid premium due and owing as shown on the records of the insurer for the full policy term due the insurer at the time of the entry of the receivership order:

- (i) including any amount representing commissions; and
- (ii) whether earned or unearned based on the termination of coverage under Sections 31A-27a-402 and 31A-27a-403.

(b) The unpaid premium due the receiver from any person other than the insured excludes any premium not collected from the insured and not earned based on the termination of coverage under Sections 31A-27a-402 and 31A-27a-403.

(3) (a) A person, other than the insured, responsible for the remittance of a premium, shall turn over to the receiver any unearned commission of that person based on the termination of coverage under Sections 31A-27a-402 and 31A-27a-403.

(b) A credit, setoff, or both may not be allowed to an agent, broker, premium finance company, or any other person for an:

- (i) amount advanced to the insurer by the person on behalf of, but in the absence of a payment by, the insured; or
- (ii) other amount paid by the person to any other person after the day on which the order of receivership is entered.

(4) Regardless of any provision to the contrary in an agency contract or other agreement, a person that collects premium or finances premium under a premium finance contract, that is due the insurer in receivership is considered to:

- (a) hold that premium in trust as a fiduciary for the benefit of the insurer; and
- (b) have availed itself of the laws of this state.

(5) (a) A premium finance company is obligated to pay an amount due the insurer from a premium finance contract, whether the premium is earned or unearned.

(b) The receiver may collect an unpaid financed premium directly from:

- (i) the premium finance company by taking an assignment of the underlying premium finance contract; or
- (ii) the insured that is a party to the premium finance contract.

(6) Upon satisfactory evidence of a violation of this section by a person other than an insured, the commissioner may pursue one or more of the following courses of action:

- (a) suspend, revoke, or refuse to renew the license of an offending party;
- (b) impose a penalty of not more than \$1,000 for each act in violation of this section by a party; and

- (c) impose any other sanction or penalty allowed for by law.
- (7) (a) Before the commissioner may take an action set forth in Subsection (6), written notice shall be given to the person accused of violating the law:
 - (i) stating specifically the nature of the alleged violation; and
 - (ii) fixing a time and place, at least 10 days after the day on which the notice is sent, when a hearing on the matter is to be held.
- (b) After a hearing, or upon failure of the accused to appear at a hearing, the commissioner, if a violation is found, shall impose the penalties under Subsection (6) that the commissioner considers advisable.
- (c) If the commissioner takes action under this Subsection (7), the party aggrieved may appeal from that action as provided in Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

31A-27a-515. Commutation and release agreements.

- (1) For purposes of this section, "casualty claims" means the insurer's aggregate claims arising out of insurance contracts in the following lines:
 - (a) farm owner multiperil;
 - (b) homeowner multiperil;
 - (c) commercial multiperil;
 - (d) medical malpractice;
 - (e) workers' compensation;
 - (f) other liability;
 - (g) products liability;
 - (h) auto liability;
 - (i) aircraft, all peril; and
 - (j) international, for lines listed in Subsections (1)(a) through (i).
- (2) (a) Notwithstanding Section 31A-27a-512, the liquidator and a reinsurer may negotiate a voluntary commutation and release of all obligations arising from a reinsurance agreement in which the insurer is the ceding party.
- (b) A commutation and release agreement voluntarily entered into by the parties shall be commercially reasonable, actuarially sound, and in the best interests of the creditors of the insurer.
- (c) (i) An agreement subject to this Subsection (2) that has a gross consideration in excess of \$250,000 shall be submitted pursuant to Section 31A-27a-107 to the receivership court for approval.
- (ii) An agreement described in this Subsection (2)(c) shall be approved by the receivership court if it meets the standards described in this Subsection (2).
- (3) Without derogating from Section 31A-27a-512, if the liquidator is unable to negotiate a voluntary commutation with a reinsurer with respect to a reinsurance agreement between the insurer and that reinsurer, the liquidator may, in addition to any other remedy available under applicable law, apply to the receivership court, with notice to the reinsurer, for an order requiring that the parties submit commutation proposals with respect to the reinsurance agreement to a panel of three arbitrators:
 - (a) at any time after 75% of the actuarially estimated ultimate incurred liability for

all of the casualty claims against the liquidation estate is reached by allowance of claims in the liquidation estate pursuant to Sections 31A-27a-603 and 31A-27a-605, calculated:

(i) as of the day on which the order of liquidation is entered by or at the instance of the liquidator; and

(ii) for purposes of this Subsection (3), not performed during the five-year period subsequent to the day on which the order of liquidation is entered; or

(b) at any time in regard to a reinsurer if that reinsurer has a total adjusted capital that is less than 250% of its authorized control level RBC as defined in Section 31A-17-601.

(4) Venue for the arbitration is within the district of the receivership court's jurisdiction or at another location agreed to by the parties.

(5) (a) If the liquidator determines that commutation would be in the best interests of the creditors of the liquidation estate, the liquidator may petition the receivership court to order arbitration.

(b) If the liquidator petitions the receivership court under Subsection (5)(a), the receivership court shall require that the liquidator and the reinsurer each appoint an arbitrator within 30 days after the day on which the order for arbitration is entered.

(c) If either party fails to appoint an arbitrator within the 30-day period, the other party may appoint both arbitrators and the appointments are binding on the parties.

(d) The two arbitrators shall be active or retired executive officers of insurance or reinsurance companies, not under the control of or affiliated with the insurer or the reinsurer.

(e) (i) Within 30 days after the day on which both arbitrators have been appointed, the two arbitrators shall agree to the appointment of a third independent, impartial, disinterested arbitrator.

(ii) If agreement to the disinterested arbitrator is not reached within the 30-day period, the third arbitrator shall be appointed by the receivership court.

(f) The disinterested arbitrator shall be a person who:

(i) is or, if retired, has been, an executive officer of a United States domiciled insurance or reinsurance company that is not under the control of or affiliated with either of the parties; and

(ii) has at least 15 years experience in the reinsurance industry.

(6) (a) The arbitration panel may choose to retain as an expert to assist the panel in its determinations, a retired, disinterested executive officer of a United States domiciled insurance or reinsurance company having at least 15 years loss reserving actuarial experience.

(b) If the arbitration panel is unable to unanimously agree on the identity of the expert within 14 days of the day on which the disinterested arbitrator is appointed, the expert shall be:

(i) designated by the commissioner:

(A) by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(B) on the basis of recommendations made by a nationally recognized society of actuaries; and

(ii) a disinterested person that has knowledge, experience, and training

applicable to the line of insurance that is the subject of the arbitration.

(c) The expert:

(i) may not vote in the proceeding; and

(ii) shall issue a written report and recommendations to the arbitration panel within 60 days after the day on which the arbitration panel receives the commutation proposals submitted by the parties pursuant to Subsection (7), which report shall:

(A) be included as part of the arbitration record; and

(B) accompany the award issued by the arbitration panel pursuant to Subsection (8).

(d) The cost of the expert is to be paid equally by the parties.

(7) Within 90 days after the day on which the disinterested arbitrator is appointed under Subsection (5), each party shall submit to the arbitration panel:

(a) the party's commutation proposals; and

(b) other documents and information relevant to the determination of the parties' rights and obligations under the reinsurance agreement to be commuted, including:

(i) a written review of any disputed paid claim balances;

(ii) any open claim files and related case reserves at net present value; and

(iii) any actuarial estimates with the basis of computation of any other reserves and any incurred-but-not-reported losses at net present value.

(8) (a) Within 90 days after the day on which the parties submit the information required by Subsection (7), the arbitration panel:

(i) shall issue an award, determined by a majority of the arbitration panel, specifying the terms of a commercially reasonable and actuarially sound commutation agreement between the parties; or

(ii) may issue an award declining commutation between the parties for a period not to exceed two years if a majority of the arbitration panel determines that it is unable to derive a commercially reasonable and actuarially sound commutation on the basis of:

(A) the submissions of the parties; and

(B) if applicable, the report and recommendation of the expert retained in accordance with Subsection (6).

(b) Following the expiration of the two-year period described in Subsection (8)(a), the liquidator may again invoke arbitration in accordance with Subsection (2), in which event Subsections (2) through (9) apply to the renewed proceeding, except that the arbitration panel is obliged to issue an award under Subsection (8)(a).

(9) Once an award is issued, the liquidator shall promptly submit the award to the receivership court for confirmation.

(10) (a) Within 30 days of the day on which the receivership court confirms the award, the reinsurer shall give notice to the receiver that the reinsurer:

(i) will commute the reinsurer's liabilities to the insurer for the amount of the award in return for a full and complete release of all liabilities between the parties, whether past, present, or future; or

(ii) will not commute the reinsurer's liabilities to the insurer.

(b) If the reinsurer's liabilities are not commuted under Subsection (10)(a), the reinsurer shall:

(i) establish and maintain in accordance with Section 31A-27a-516 a reinsurance recoverable trust in the amount of 102% of the award; and

(ii) pay the costs and fees associated with establishing and maintaining the trust established under this Subsection (10)(b).

(11) (a) If the reinsurer notifies the liquidator that it will commute the reinsurer's liabilities pursuant to Subsection (10)(a)(i), the liquidator has 30 days from the day on which the reinsurer notifies the liquidator to:

(i) tender to the reinsurer a proposed commutation and release agreement:

(A) providing for a full and complete release of all liabilities between the parties, whether past, present, or future; and

(B) that requires that the reinsurer make payment of the commutation amount within 14 days from the day on which the agreement is consummated; or

(ii) reject the commutation in writing, subject to receivership court approval.

(b) If the liquidator rejects the commutation subject to approval of the receivership court in accordance with Subsection (11)(a)(ii), the reinsurer shall establish and maintain a reinsurance recoverable trust in accordance with Section 31A-27a-516.

(c) The liquidator and the reinsurer shall share equally in the costs and fees associated with establishing and maintaining the trust established under Subsection (11)(b).

(12) Except for the period provided in Subsection (8)(b), the time periods established in Subsections (6), (7), (8), (10), and (11) may be extended:

(a) upon the consent of the parties; or

(b) by order of the receivership court, for good cause shown.

(13) Subject to Subsection (14), this section may not be construed to supersede or impair any provision in a reinsurance agreement that establishes a commercially reasonable and actuarially sound method for valuing and commuting the obligations of the parties to the reinsurance agreement by providing in the contract the specific methodology to be used for valuing and commuting the obligations between the parties.

(14) (a) A commutation provision in a reinsurance agreement is not effective if it is demonstrated to the receivership court that the provision is entered into in contemplation of the insolvency of one or more of the parties.

(b) A contractual commutation provision entered into within one year of the day on which the liquidation order of the insurer is entered is rebuttably presumed to have been entered into in contemplation of insolvency.

Amended by Chapter 345, 2008 General Session

Amended by Chapter 382, 2008 General Session

31A-27a-516. Reinsurance recoverable trust provisions.

(1) As used in this section:

(a) "Beneficiary" means the domiciliary insurance commissioner, as liquidator of the insurer for whose sole benefit a reinsurance recoverable trust is established.

(b) "Grantor" means the reinsurer who has established a reinsurance recoverable trust for the sole benefit of the beneficiary.

(c) "Qualified United States financial institution" means an institution that:

(i) (A) is organized under the laws of the United States or any state of the United States; or

(B) in the case of a United States branch or agency office of a foreign banking

organization, licensed under the laws of the United States or any state of the United States;

(ii) is granted authority to operate with fiduciary powers; and

(iii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(d) "Reinsurance recoverable trust" means a trust established pursuant to Section 31A-27a-515.

(2) (a) The trustee of a reinsurance recoverable trust shall be a qualified United States financial institution.

(b) The trust agreement governing a reinsurance recoverable trust shall:

(i) be entered into by the beneficiary, the grantor, and a trustee;

(ii) create a trust account into which assets shall be deposited in accordance with Section 31A-27a-515;

(iii) provide that the beneficiary may withdraw assets from the trust only:

(A) (I) on the basis of a filed claim allowed pursuant to Section 31A-27a-603 or 31A-27a-605;

(II) where the grantor is notified, in writing, of the allowance of the claim;

(III) to the extent that the amount to be withdrawn exceeds any setoff permitted by Section 31A-27a-510 due to the grantor; and

(IV) when 60 days expires during which the grantor fails to:

(Aa) pay the claim; or

(Bb) subject to and without derogation from Section 31A-27a-512, which at all times governs and remains binding on the reinsurer, file notice of a written dispute with respect to the claim under and in terms of the reinsurance agreement; or

(B) if the beneficiary complies with any different or other terms and conditions mutually agreed to by the beneficiary and the grantor in the trust agreement;

(iv) require the trustee to:

(A) receive assets and hold all assets at the trustee's office in the United States in a safe place;

(B) determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate the assets, without consent or signature from the grantor or any other person;

(C) furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter; and

(D) notify the grantor and the beneficiary within 10 days of a deposit to or withdrawal from the trust account;

(v) be made subject to and governed by the laws of this state;

(vi) prohibit the invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee;

(vii) provide that the trustee is liable for the trustee's negligence, willful misconduct, or lack of good faith;

(viii) subject to Subsection (2)(c), provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the day on which the beneficiary and grantor receive the notice;

(ix) subject to Subsection (2)(c), provide that the trustee may be removed by the

grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the day on which the trustee and the beneficiary receive the notice;

(x) provide that the grantor has the full and unqualified right to vote any shares of stock in the trust account except that, subject to other provisions of this section, an interest or dividend paid on shares of stock or other obligation in the trust account shall remain in the trust;

(xi) specify categories of investments reasonably acceptable to the beneficiary;

(xii) authorize the trustee to invest funds and to accept substitutions, by the grantor, that the trustee determines are at least equal in market value to the assets withdrawn provided that no investment or substitution shall be made without prior approval from the beneficiary, which may not be unreasonably or arbitrarily withheld;

(xiii) subject to Subsection (2)(d), provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred;

(xiv) specify the types of assets that may be included in the trust account:

(A) which shall consist only of:

(I) cash in United States dollars;

(II) certificates of deposit issued by a United States bank and payable in United States dollars;

(III) investments permitted by this state's insurance law; or

(IV) any combination of the types specified by this Subsection (2)(b)(xiv)(A);

(B) except that if investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust, may not exceed 5% of total investments; and

(C) subject to the assets deposited in the trust account being valued according to the asset's current fair market value;

(xv) give the grantor the right to seek approval from the beneficiary, which may not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the grantor, if:

(A) the grantor, at the time of withdrawal, replaces the withdrawn assets with other qualified assets so as to maintain at all times the deposit in the required amount; or

(B) after withdrawal and transfer, the market value of the trust account is no less than 102% of the award made pursuant to Subsection 31A-27a-515(8)(a);

(xvi) provide for the return of any amount withdrawn in excess of the actual amounts required for:

(A) payment of reported allowed claims under Subsection (2)(b)(iii); and

(B) interest payments at a rate not in excess of the prime rate of interest on the excess amounts withdrawn; and

(xvii) provide for termination of the reinsurance recoverable trust in accordance with Subsection (6).

(c) Notwithstanding Subsection (2)(b)(viii) or (ix), a resignation or removal may not be effective until:

(i) a successor trustee is appointed and approved by the beneficiary and the grantor; and

(ii) all assets in the trust are transferred to the new trustee.

(d) Notwithstanding Subsection (2)(b)(xiii), a transfer may be conditioned upon the trustee receiving, before or simultaneously with, other specified assets.

(e) Subsection (2)(b) may not be construed to alter the rights or obligations of the parties pursuant to contractual and statutory provisions providing for notice and the determination of a claim.

(3) The grantor shall, before depositing assets with the trustee, execute assignments or endorsements in blank, or transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the beneficiary, or the trustee upon the direction of the beneficiary, may whenever necessary negotiate these assets without consent or signature from the grantor or any other person.

(4) (a) Without derogating Section 31A-27a-512, the grantor or the beneficiary may request that the receivership court review the amount held if:

(i) the grantor and beneficiary fail to reach agreement on the extent, if any, to which supplementation or reduction of a reinsurance recoverable trust should be occasioned;

(ii) (A) the reinsurance recoverable trust is exhausted; or

(B) the reinsurance recoverable trust is insufficient to respond to claims allowed pursuant to Section 31A-27a-603 or 31A-27a-605; and

(iii) the grantor or the beneficiary believe that the amount held in the reinsurance recoverable trust is either deficient or overstated.

(b) The review described in this Subsection (4) shall be conducted applying procedures and terms as the receivership court shall, in its sole discretion, direct.

(5) A reinsurance recoverable trust shall terminate upon the earlier of:

(a) receivership court approval of a voluntary commutation between the grantor and the beneficiary pursuant to Subsection 31A-27a-515(2);

(b) the mutual agreement of the grantor and the beneficiary; or

(c) a finding by the receivership court that the grantor has discharged its liabilities to the beneficiary.

(6) Upon termination of a reinsurance recoverable trust, all assets not previously withdrawn by the beneficiary, pursuant to Subsection (2)(b)(iii), shall, with written approval of the beneficiary, be delivered to the grantor.

Amended by Chapter 345, 2008 General Session

31A-27a-601. Filing of claims.

(1) (a) Subject to the other provisions of this Subsection (1), proof of a claim shall be filed with the liquidator in the form required by Section 31A-27a-602 on or before the last day for filing specified in the notice required under Section 31A-27a-406.

(b) The last day for filing specified in the notice may not be later than 18 months after the day on which the order of liquidation is entered unless the receivership court, for good cause shown, extends the time.

(c) Proof of a claim for the following does not need to be filed unless the liquidator expressly requires filing of proof:

(i) cash surrender value in life insurance and annuities;

(ii) investment value in life insurance and annuities other than cash surrender value; and

(iii) any other policy insuring the life of a person.

(d) Only upon application of the liquidator, the receivership court may allow alternative procedures and requirements for the filing of proof of a claim or for allowing or proving a claim.

(e) Upon application, if the receivership court dispenses with the requirements of filing a proof of claim by a person, class, or group of persons, a proof of claim for that person, class, or group is considered as being filed for all purposes, except that the receivership court's waiver of proof of claim requirements may not impact guaranty association proof of claim filing requirements or coverage determinations to the extent that the guaranty association statute or filing requirements are inconsistent with the receivership court's waiver of proof.

(2) The liquidator may permit a claimant that makes a late filing to share ratably in distributions, whether past or future, as if the claim were not filed late, to the extent that the payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

(a) the eligibility to file a proof of claim was not known to the claimant, and the claimant files a proof of claim within 90 days after the day on which the claimant first learns of the eligibility;

(b) (i) a transfer to a creditor is:

(A) avoided under Section 31A-27a-503, 31A-27a-504, 31A-27a-506, or 31A-27a-507; or

(B) voluntarily surrendered under Section 31A-27a-509; and

(ii) the filing satisfies the conditions of Section 31A-27a-509; or

(c) the valuation of security held by a secured creditor under Section 31A-27a-610 shows a deficiency and the claim for the deficiency is filed within 30 days after the valuation.

(3) If a reinsurer's reinsurance contract terminates pursuant to Section 31A-27a-513:

(a) a claim filed by the receiver which arises from the termination may not be considered late if the claim is filed within 90 days of the day on which the reinsurance contract terminates; and

(b) the reinsurer shall receive a ratable share of distributions, whether past or future, as if the claim described in Subsection (3)(a) is not late.

(4) Notwithstanding any other provision of this chapter, the liquidator may petition the receivership court, subject to Section 31A-27a-107, to set a date certain after which no further claims may be filed.

Enacted by Chapter 309, 2007 General Session

31A-27a-602. Proof of claim.

(1) Proof of claim shall consist of a statement signed by the claimant or on behalf of the claimant that includes all of the following that are applicable:

(a) the particulars of the claim including the consideration given for the claim;

(b) the identity and amount of the security on the claim;

(c) the payments made on the debt, if any;

(d) that the sum claimed is justly owing and there is no setoff, counterclaim, or

defense to the claim;

(e) any right of priority of payment or other specific right asserted by the claimant;

(f) the name and address of the claimant and the attorney, if any, who represents the claimant; and

(g) the claimant's Social Security number or federal employer identification number.

(2) The liquidator may require that:

(a) a prescribed form be used under this section; and

(b) other information and documents be included.

(3) At any time the liquidator may:

(a) require the claimant to present information or evidence supplementary to that required under Subsection (1);

(b) take testimony under oath;

(c) require production of one or more affidavits or depositions; or

(d) otherwise obtain additional information or evidence.

(4) (a) An affected guaranty association may file a single omnibus proof of claim for all claims of the affected guaranty association in connection with payment of claims of the insurer.

(b) The omnibus proof of claim may be periodically updated by the affected guaranty association without regard to the deadline specified in Subsection 31A-27a-601(1).

(c) An affected guaranty association may be required to submit a reasonable amount of documentation in support of the claim.

Enacted by Chapter 309, 2007 General Session

31A-27a-603. Allowance of claims.

(1) (a) Except as provided in Subsections (11) and (12), the liquidator shall:

(i) review all claims filed in the liquidation proceeding in accordance with this chapter; and

(ii) further investigate a claim, as the liquidator considers necessary.

(b) Consistent with this chapter, the liquidator may allow, disallow, or compromise a claim that will be recommended to the receivership court unless the liquidator is required by law to accept the claim as settled by a person, including an affected guaranty association, subject to a statutory or contractual right of the affected reinsurers to participate in the claims allowance process.

(c) Notwithstanding any other provision of this chapter, a claim under a policy of insurance may not be allowed for an amount in excess of the applicable policy limits.

(2) (a) Pursuant to the review required by Subsection (1), the liquidator shall provide notice of the claim determination to the claimant or the claimant's attorney.

(b) The notice required by this Subsection (2) shall set forth:

(i) the amount of the claim allowed by the liquidator, if any;

(ii) the priority class of the claim as established in Section 31A-27a-701; and

(iii) if the claim is denied, the reason for the denial.

(c) In regard to a claim to be allowed pursuant to Section 31A-27a-605,

preliminary notice of the amount of the claim determination shall be provided to any reinsurer that is or may be liable in respect to the claim at least 45 days before the day on which notice is provided to the claimant pursuant to this Subsection (2).

(d) In regard to a claim being allowed other than pursuant to Section 31A-27a-605, the notice sent to the claimant may be provided to any reinsurer that is or may be liable in respect to the claim.

(e) If no timely objection is submitted, the claim determination is binding on the reinsurer upon allowance.

(3) (a) Within 45 days after the day on which the notice described in Subsection (2) is mailed, the claimant noticed may submit a written objection to the liquidator.

(b) An objection provided for under this Subsection (3) shall clearly set out:

(i) all facts and the legal basis, if any, for the objection; and

(ii) the reasons why the claim should be allowed at a different amount or in a different priority class.

(c) If no timely objection is submitted, the claimant may not further object, and the determination is final.

(d) The liquidator may accelerate the allowance of a claim by obtaining a waiver of an objection.

(4) (a) A claim that is not mature as of the coverage termination date established under Section 31A-27a-402 may be allowed as if it were mature, except the claim shall be discounted to present value.

(b) A claim is not mature if payment on the claim is not yet due.

(5) The following is not required to be considered as evidence of liability or of the amount of damages:

(a) a judgment or order against an insured or the insurer entered:

(i) after the day on which a successful petition for receivership is initially filed; or

(ii) within 120 days before the day on which the petition is initially filed; or

(b) a judgment or order against an insured or the insurer entered at any time by default or by collusion.

(6) A claim under an employment contract by a director, officer, or person in fact performing similar functions or having similar powers is limited to payment for services rendered before an order of receivership, unless explicitly approved in writing by:

(a) the commissioner before an order of receivership;

(b) the rehabilitator before the day on which the order of liquidation is entered; or

(c) the liquidator after the day on which the order of liquidation is entered.

(7) The total liability of the liquidator to all claimants arising out of the same act or policy shall be no greater than the insurer's total liability would have been were the insurer not in liquidation.

(8) (a) The liquidator shall disallow a claim that is for or determined to be for a de minimis amount.

(b) A de minimis amount is an amount equal to or less than a maximum de minimis amount approved by the receivership court as being reasonable and necessary for administrative convenience.

(9) A claim that does not contain all the applicable information required by Section 31A-27a-602:

(a) does not need to be further reviewed or adjudicated; and

(b) may be denied or disallowed by the liquidator subject to the notice and objection procedures in this section.

(10) (a) The liquidator may reconsider a claim on the basis of additional information and amend the recommendation to the receivership court.

(b) The claimant shall be afforded the same notice and opportunity to be heard on all changes in the recommendation as in the claim's initial determination.

(c) The receivership court may amend the receivership court's allowance or disallowance as appropriate.

(11) (a) The liquidator is not required to process claims for any class until it appears reasonably likely that property will be available for a distribution to that class.

(b) If there are insufficient assets to justify processing all claims for a class listed in Section 31A-27a-701, the liquidator shall:

(i) report the facts to the receivership court; and

(ii) make appropriate recommendations for handling the remainder of the claims.

(12) A claim of a lessor for damages resulting from the termination of a lease of real property shall be disallowed to the extent that the claim exceeds the sum of:

(a) the rent reserved by the lease, without acceleration, for the greater of one year, or 15%, not to exceed three years, of the remaining term of the lease, following the earlier of:

(i) the day on which the petition is filed; and

(ii) the day on which the lessor repossessed, or the lessee surrendered, the leased property; and

(b) any unpaid rent due under the lease, without acceleration, on the earlier of the dates specified in Subsection (12)(a).

Enacted by Chapter 309, 2007 General Session

31A-27a-604. Claims under an occurrence policy, surety bond, surety undertaking.

(1) Subject to Section 31A-27a-603, an insured may file a claim for the protection afforded under the insured's policy, irrespective of whether a claim is known at the time of filing, if the policy is an occurrence policy.

(2) Subject to Section 31A-27a-603, an obligee may file a claim for the protection afforded under a surety bond or a surety undertaking issued by the insurer as to which the obligee is the beneficiary, irrespective of whether a claim is known at the time of filing.

(3) After a claim is filed under Subsection (1) or (2), when a specific claim is made by or against the insured or by the obligee:

(a) the insured or the obligee shall supplement the claim; and

(b) the receiver shall treat the claim as a contingent or unliquidated claim under Section 31A-27a-605.

Enacted by Chapter 309, 2007 General Session

31A-27a-605. Allowance of contingent and unliquidated claims.

(1) As used in this section, "claim" means a demand for payment pursuant to

Section 31A-27a-601 under the terms and conditions of a contract issued by the insurer as a result of a known accident, casualty, disaster, loss, event, or occurrence.

(2) (a) A claim of an insured or third party may be allowed under Section 31A-27a-603, regardless of the fact that it is contingent or unliquidated if:

- (i) any contingency is removed in accordance with Subsection (3); and
- (ii) the value of the claim is determined in accordance with Subsection (4).

(b) A claim is contingent if:

- (i) the accident, casualty, disaster, loss, event, or occurrence insured, reinsured, or bonded against occurs on or before the date fixed under Section 31A-27a-601; and
- (ii) the act or event triggering the insurer's obligation to pay has not occurred as of the date fixed under Section 31A-27a-401.

(c) A claim is unliquidated if the insurer's obligation to pay is established, but the amount of the claim has not been determined.

(3) (a) Unless the receivership court directs otherwise, a contingent claim may be allowed if:

- (i) the claimant presents proof of the insurer's obligation to pay reasonably satisfactory to the liquidator; or
- (ii) subject to Subsection (3)(b), the claim is based on a cause of action against an insured of the insurer, and:

(A) it may be reasonably inferred from proof presented upon the claim that the claimant would be able to obtain a judgment; and

(B) the person furnishes suitable proof.

(b) A contingent claim may not be allowed under Subsection (3)(a)(ii)(B) if the receivership court for good cause shown shall otherwise direct that no further valid claims can be made against the insurer arising out of the cause of action other than those already presented.

(4) (a) An unliquidated claim may be allowed if its amount has been determined.

(b) If the amount of an unliquidated claim filed pursuant to Section 31A-27a-601 remains undetermined, the valuation of the unliquidated claim may be made by estimate whenever the liquidator determines that:

(i) liquidation of the claim would unduly delay the administration of the liquidation proceeding; or

(ii) the administrative expense of processing and adjudicating the claim or group of claims of a similar type would be unduly excessive when compared with the property that is estimated to be available for distribution with respect to the claim.

(c) Any estimate shall be based on an accepted method of valuing a claim with reasonable certainty at the claim's net present value, such as an actuarial evaluation.

(5) (a) Notwithstanding the other provisions of this section, a claim for the value or breach of a life insurance policy, disability income insurance policy, long-term care insurance policy, or annuity may not result in or serve as the basis of any liability of a reinsurer of the insurer.

(b) A reinsurer's liability to the insurer shall be determined exclusively on the basis of its contracts of reinsurance and Section 31A-27a-513.

(6) (a) The liquidator may petition the receivership court to set a date certain before which all claims under this section shall be final.

(b) In addition to the notice requirements of Section 31A-27a-107, the liquidator

shall give notice of the filing of the petition to all claimants with claims that remain contingent or unliquidated under this section.

Enacted by Chapter 309, 2007 General Session

31A-27a-606. Special provisions for third party claims.

(1) Whenever a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator on or before the last day for filing claims.

(2) Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation.

(3) (a) The liquidator may make recommendations to the receivership court for the allowance of an insured's claim after consideration of:

(i) the probable outcome of any pending action against the insured on which the claim is based;

(ii) the probable damages recoverable in the action; and

(iii) the probable costs and expenses of defense.

(b) After allowance by the receivership court, the liquidator shall withhold any distribution payable on the claim, pending the outcome of litigation and negotiation between the insured and the third party.

(c) The liquidator may reconsider the claim as provided in Subsection 31A-27a-603(10).

(d) As a claim against the insured is settled or barred, the insured or third party, as appropriate, shall be paid, from the amount withheld, the same percentage distribution as is paid on other claims of like priority, on the basis of the lesser of:

(i) the amount actually due from the insured by action or paid by agreement plus the reasonable costs and expense of defense; or

(ii) the amount allowed on the claim by the receivership court.

(e) After all claims are settled or barred, any sum remaining from the amount withheld shall revert to the undistributed property of the insurer.

(4) (a) If several claims founded upon one policy are timely filed, whether by third parties or as claims by the insured under this section, and the aggregate amount of the timely filed allowed claims exceeds the aggregate policy limits, the liquidator may:

(i) apportion the policy limits ratably among the timely filed allowed claims; or

(ii) give notice to the insured, known third parties, and affected guaranty associations that the aggregate policy limits have been exceeded.

(b) Thirty days after the day on which the liquidator's notice is given under this Subsection (4):

(i) no further amounts shall be allowed;

(ii) the policy limits shall be apportioned ratably among the timely filed allowed claims; and

(iii) any additional claims shall be rejected.

(c) A claim by the insured shall be evaluated as in Subsection (3). If an insured's claim is subsequently reduced under Subsection (3), the amount freed shall be apportioned ratably among the claims that have been reduced under this Subsection (4).

(5) A claim may not be allowed under this section to the extent the claim is covered by a guaranty association.

(6) A claimant may withdraw a proof of claim with the liquidator's approval. The liquidator may approve the withdrawal:

- (a) after giving notice of the withdrawal to the insured; and
- (b) only upon a showing of good cause.

(7) The filing of a proof of claim in connection with a claim against an insured shall have the following effect on the rights of the claimant and the insured:

(a) By filing a proof of claim, a claimant:

- (i) waives any right to pursue the personal assets of the insured with respect to the claim, to the extent of the coverage or policy limits provided by the insurer; and
- (ii) except as provided in this section, agrees that, to the extent of the coverage or policy limits provided by the insurer, the claimant shall seek satisfaction of the claim against the insured solely from:

(A) distributions paid by the liquidator on the claim; and

(B) any payments that an affected guaranty association may pay on account of the claim.

(b) The waiver provided under this section:

(i) is conditioned upon the cooperation of the insured with:

(A) the liquidator in the defense of the claim; and

(B) any applicable guaranty association in defense of the claim; and

(ii) does not operate to:

(A) discharge the guaranty association from any of its responsibilities and duties;

(B) release the insured with respect to any claim in excess of the coverage or policy limits provided by the insurer or any other responsible party; or

(C) release the insured to the extent of the guaranty association's claim for reimbursement from the insured under a guaranty association statutory provision instituting a right to recover from high net worth insureds.

(c) The waiver provided under this section is void if:

(i) a claimant withdraws the claimant's proof of claim under Subsection (6); or

(ii) the liquidator avoids insurance coverage in connection with a proof of the claim.

(d) The liquidator shall provide, where applicable, notice of the election of remedies provision in this section on any proof of claim form it distributes that shall:

(i) be inserted above the claimant's signature line in typeface:

(A) no smaller than the typeface of the rest of the notice; and

(B) in no event smaller than font size 14; and

(ii) include a statement substantially similar to the following: "I understand by filing this claim in the estate of the insurer I am waiving any right to pursue the personal assets of the insured to the extent that there are policy limits or coverage provided by the now insolvent insurer."

Enacted by Chapter 309, 2007 General Session

31A-27a-607. Disputed claims.

(1) (a) When a claim is disallowed in whole or in part by the liquidator, written notice of the determination and of the right to object shall be given promptly to the claimant or the claimant's attorney of record, if any, by first-class mail at the addresses shown in the proof of claim.

(b) (i) Within 45 days from the day on which the notice required by Subsection (1)(a) is mailed, the claimant may file an objection with the liquidator.

(ii) If an objection is not filed within the period provided in Subsection (1)(b)(i), the claimant may not further object to the determination.

(2) (a) If an objection is filed in accordance with Subsection 31A-27a-603(3)(a) and the liquidator does not alter the liquidator's ruling, the liquidator shall ask the court for a hearing as soon as practicable.

(b) If the liquidator asks for a hearing under Subsection (2)(a), the court shall issue an order setting a date as early as possible.

(c) At the request of the liquidator, the court may establish procedures for the objections hearing.

(d) The liquidator shall give notice of a hearing under this Subsection (2) by first-class mail to:

(i) the claimant or the claimant's attorney; and

(ii) any other persons directly affected.

(e) A hearing under this Subsection (2):

(i) shall be heard without a jury; and

(ii) may be heard by:

(A) the court; or

(B) a court appointed referee.

(f) A hearing under this Subsection (2) shall be limited to the evidence upon which the liquidator made the determination of the claim.

(g) If a referee is appointed under this Subsection (2), the referee shall submit to the court:

(i) findings of fact;

(ii) recommendations; and

(iii) a transcript of the hearing.

(h) The court shall review the referee's findings of fact and recommendations for correctness by reviewing the record, including the hearing transcript.

(i) Consistent with Section 31A-27a-608, the court may approve, disapprove, or modify:

(i) the liquidator's determination of a claim; or

(ii) a referee's recommendations on a claim.

(3) A court order issued after a hearing and pursuant to this section may be appealed as a final order for purposes of Rule 54, Utah Rules of Civil Procedure.

(4) This section is not applicable to a dispute with respect to a coverage determination by an affected guaranty association as part of the affected guaranty association's statutory obligations.

Enacted by Chapter 309, 2007 General Session

31A-27a-608. Liquidator's recommendations to the receivership court.

(1) The liquidator shall, from time to time as determined by the liquidator, present to the receivership court for approval, reports of claims settled or determined by the liquidator under Section 31A-27a-603.

(2) A report required by this section shall include information identifying:

- (a) the claim;
- (b) the amount of the claim; and
- (c) the priority class of the claim.

Enacted by Chapter 309, 2007 General Session

31A-27a-609. Claims of codebtor.

If a creditor does not timely file a proof of the creditor's claim, the following may file a proof of the claim:

- (1) a person who is liable to the creditor together with the insurer; or
- (2) a person who has secured the creditor.

Enacted by Chapter 309, 2007 General Session

31A-27a-610. Secured creditor's claims.

(1) The value of a security held by a secured creditor shall be determined in one of the following ways:

- (a) by converting the security into money according to the terms of the agreement pursuant to which the security is delivered to the creditor; or
- (b) by agreement or litigation between the creditor and the liquidator.

(2) (a) The receiver has the first priority to use collateral to reimburse a prepetition loss or expense if:

- (i) a surety pays a loss or loss adjustment expense under its own surety instrument before any petition for a delinquency proceeding;
- (ii) the principal posts collateral that remains available to reimburse the loss, the loss adjustment expense, or both; and
- (iii) at the time of the petition, the collateral posted under this Subsection (2)(a) has not been credited against the payments made.

(b) If the principal under a surety bond or a surety undertaking pledges collateral, including a guaranty or a letter of credit, to secure the principal's reimbursement obligation to the insurer, the claim of an obligee or, subject to the discretion of the receiver, completion contractor under the surety bond or surety undertaking shall be satisfied first out of the collateral or the collateral's proceeds.

(c) In making a distribution to an obligee or completion contractor, the receiver shall retain a sufficient reserve for any other potential claim against the collateral under Subsection (2)(b).

(d) If the collateral is insufficient to satisfy in full all potential claims against it under Subsections (2)(b) and (f):

- (i) the claims shall be paid on a pro rata basis; and
- (ii) the obligees or completion contractor shall have claims, subject to allowance pursuant to Section 31A-27a-603, for any deficiency.

(e) If the time to assert a claim against a surety bond or a surety undertaking

expires and all claims have been satisfied in full, any remaining collateral for the surety bond or surety undertaking shall be returned to the principal.

(f) (i) To the extent that a guaranty association has made a payment relating to a claim against a surety bond, the guaranty association shall first be reimbursed for the payment and related expenses out of the available collateral or proceeds related to the surety bond.

(ii) To the extent the collateral is sufficient, the guaranty association will be reimbursed for 100% of the guaranty association's payment.

(iii) If the collateral is insufficient to satisfy in full all potential claims against it under this Subsection (2)(f) and Subsection (2)(b), the one or more guaranty associations that pay claims on a surety bond:

(A) are entitled to a pro rata share of the available collateral in accordance with Subsection (2)(d); and

(B) have claims against the general assets of the estate in accordance with Section 31A-27a-603 for any deficiency.

(iv) A payment made to a guaranty association from the collateral may not be considered early access or otherwise considered a distribution out of the general assets or property of the estate.

(v) A guaranty association shall subtract any payment from the collateral from the guaranty association's final claims against the estate.

(3) (a) The amount determined pursuant to Subsection (1) shall be credited upon the secured claim, and the claimant may file a proof of claim, subject to the other provisions of this chapter, for any deficiency, which shall be treated as an unsecured claim.

(b) If the claimant surrenders the claimant's security to the liquidator, the entire claim shall be treated as if unsecured.

(4) The liquidator may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, the property to the extent of any benefit to the holder of the allowed secured claim.

Enacted by Chapter 309, 2007 General Session

31A-27a-611. Qualified financial contracts.

(1) As used in this section:

(a) (i) "Actual direct compensatory damages" does not include:

(A) punitive or exemplary damages;

(B) damages for lost profit or lost opportunity; or

(C) damages for pain and suffering.

(ii) "Actual direct compensatory damages" includes:

(A) normal and reasonable costs of cover; or

(B) other reasonable measures of damages used in the derivatives, securities, or other market for the contract or agreement claim.

(b) "Business day" means a day other than:

(i) a Saturday;

(ii) a Sunday; or

(iii) day on which either the New York Stock Exchange or the Federal Reserve

Bank of New York is closed.

(c) "Contractual right" includes:

(i) a right set forth:

(A) in a rule or bylaw of:

(I) a derivatives clearing organization, as defined in the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.;

(II) a multilateral clearing organization, as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. Sec. 4421;

(III) a national securities exchange;

(IV) a national securities association;

(V) a securities clearing agency;

(VI) a contract market designated under the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.;

(VII) a derivatives transaction execution facility registered under the Commodity Exchange Act, 7 U.S.C. Sec. 1 et seq.; or

(VIII) a board of trade, as defined in the Commodity Exchange Act, 7 U.S.C.

Sec. 1 et seq.; or

(B) in a resolution of the governing board of an entity described in Subsection (1)(c)(i)(A); and

(ii) a right, whether or not evidenced in writing, arising:

(A) under statutory or common law;

(B) under law merchant; or

(C) by reason of normal business practice.

(d) For purposes of Subsection (3), "walkaway clause" means a provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist:

(i) solely because of:

(A) the party's status as a nondefaulting party in connection with the insolvency of an insurer that is subject to this chapter and a party to the contract; or

(B) the appointment of or the exercise of rights or powers by a receiver of an insurer that is subject to this chapter and a party to the contract; and

(ii) not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under:

(A) the contract;

(B) any other contract between those parties; or

(C) applicable law.

(2) Notwithstanding any other provision of this chapter, including any provision of this chapter permitting the modification of a contract, or other law of a state:

(a) a person may not be stayed or prohibited from exercising:

(i) a contractual right to cause the termination, liquidation, acceleration, or close out of an obligation under or in connection with a netting agreement or qualified financial contract with an insurer because of:

(A) the insolvency, financial condition, or default of the insurer at any time, if the right is enforceable under applicable law other than this chapter; or

(B) the commencement of a formal delinquency proceeding under this chapter;

(ii) a right under any of the following relating to one or more netting agreements or qualified financial contracts:

- (A) a pledge agreement or arrangement;
- (B) a security agreement or arrangement;
- (C) a collateral agreement or arrangement;
- (D) a reimbursement agreement or arrangement;
- (E) a guarantee agreement or arrangement;
- (F) any other similar security agreement or arrangement; or
- (G) other credit enhancement; or

(iii) subject to Subsection 31A-27a-510(2), a right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with one or more qualified financial contracts where the counterparty or its guarantor is organized under the laws of:

- (A) the United States;
- (B) a state; or

(C) a foreign jurisdiction approved by the Securities Valuation Office of the National Association of Insurance Commissioners as eligible for netting; or

(b) if a counterparty to a master netting agreement or a qualified financial contract with an insurer subject to a proceeding under this chapter terminates, liquidates, closes out, or accelerates the master netting agreement or qualified financial contract:

(i) damages shall be measured as of the date or dates of termination, liquidation, close out, or acceleration; and

(ii) the amount of a claim for damages shall be actual direct compensatory damages calculated in accordance with Subsection (7).

(3) (a) Upon termination of a netting agreement or qualified financial contract, the net or settlement amount, if any, owed by a nondefaulting party to an insurer against which an application or petition is filed under this chapter shall be transferred to or on the order of the receiver for the insurer:

(i) even if the insurer is the defaulting party; and

(ii) notwithstanding any walkaway clause in the netting agreement or qualified financial contract.

(b) (i) A limited two-way payment or first method provision in a netting agreement or qualified financial contract with an insurer that defaults is considered to be a full two-way payment or second method provision as against the defaulting insurer.

(ii) Property or an amount described in this Subsection (3)(b) shall, except to the extent it is subject to one or more secondary liens or encumbrances or rights of netting or setoff, be a general asset of the insurer.

(4) In making a transfer of a netting agreement or qualified financial contract of an insurer subject to a proceeding under this chapter, the receiver shall either:

(a) transfer to one party, other than an insurer subject to a proceeding under this chapter, all netting agreements and qualified financial contracts between a counterparty or an affiliate of the counterparty and the insurer that is the subject of the proceeding, including:

(i) all rights and obligations of each party under each netting agreement and qualified financial contract; and

(ii) all property, including any guarantees or other credit enhancement, securing any claims of each party under each netting agreement and qualified financial contract; or

(b) transfer none of the netting agreements, qualified financial contracts, rights, obligations, or property referred to in Subsection (4)(a) with respect to the counterparty and an affiliate of the counterparty.

(5) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use its best efforts to notify any person who is party to the netting agreements or qualified financial contracts of the transfer by 12 noon, the receiver's local time, on the business day following the transfer.

(6) (a) Notwithstanding any other provision of this chapter and except for Subsection (6)(b), a receiver may not avoid a transfer of money or other property arising under or in connection with any of the following that is made before the commencement of a formal delinquency proceeding under this chapter:

(i) a netting agreement;
(ii) a qualified financial contract; or
(iii) one of the following relating to a netting agreement or qualified financial contract:

- (A) a pledge agreement;
- (B) a security agreement;
- (C) a collateral agreement;
- (D) a guarantee agreement;
- (E) any other similar security arrangement; or
- (F) a credit support document.

(b) A transfer may be avoided under Subsection 31A-27a-507(1) if the transfer is made with actual intent to hinder, delay, or defraud:

- (i) the insurer;
- (ii) a receiver appointed for the insurer; or
- (iii) an existing or future creditor.

(7) (a) In exercising the rights of disaffirmance or repudiation of a receiver with respect to a netting agreement or qualified financial contract to which an insurer is a party, the receiver for the insurer shall either:

(i) disaffirm or repudiate all netting agreements and qualified financial contracts between a counterparty or an affiliate of the counterparty and the insurer that is the subject of the proceeding; or

(ii) disaffirm or repudiate none of the netting agreements and qualified financial contracts referred to in Subsection (7)(a)(i) with respect to the person or an affiliate of the person.

(b) Notwithstanding any other provision of this chapter, a claim of a counterparty against the estate arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract that has not been previously affirmed in the liquidation or immediately preceding rehabilitation case shall be determined and shall be allowed or disallowed:

(i) as if the claim arose before the day on which the petition for liquidation is filed; or

(ii) if a rehabilitation proceeding is converted to a liquidation proceeding, as if the claim had arisen before the day on which the petition for rehabilitation is filed.

(c) The amount of a claim shall be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract.

(8) This section does not apply to a person who is an affiliate of the insurer that is the subject of the proceeding.

(9) All rights of a counterparty under this chapter apply to a netting agreement or qualified financial contract entered into on behalf of the general account or separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

(10) (a) The definition of "qualified financial contract" in Section 31A-27a-102 shall be interpreted to be consistent with the definitions applicable under federal law in instances of insolvency of other types of financial institutions.

(b) The definition of "qualified financial contract" and this section do not:

(i) affect the scope of permissible investments of insurers or the valuation of those investments; or

(ii) modify any other regulatory framework applicable to investments or investment practices of insurers.

Enacted by Chapter 309, 2007 General Session

31A-27a-612. Administration of deductible policies and insured collateral.

(1) As used in this section:

(a) "Collateral" means any of the following that secures an insured's obligation to pay or to reimburse the insurer for deductible claim payments and to reimburse or pay to the insurer other secured obligations:

(i) cash;

(ii) a letter of credit of the insured;

(iii) a surety bond posted by the insured; or

(iv) any other form of security posted by the insured.

(b) "Deductible claim" means a claim, including a loss or allocated loss adjustment expense, under a deductible policy within the insured's obligation to pay a portion of a claim or claim expense that the insurer is obligated to pay to a person other than the insured by the deductible policy or by operation of law.

(c) (i) "Deductible limit" means a limit on an amount to be paid or reimbursed by the insured under a deductible policy that is equal to or greater than \$5,000.

(ii) A deductible limit may be any amount of the risk exposure before the insurer agrees to become liable for the insurance risk without a right of recoupment from the insured for the insurer's payment of claims or expenses related to a claim under the deductible policy.

(d) (i) "Deductible policy" means any combination of one or more policies, endorsements, contracts, or security agreements in which the insured agrees with the insurer to:

(A) pay directly:

(I) the initial portion of a claim under the policy, endorsement, contract, or agreement up to a specified dollar amount; or

(II) the expenses related to a claim; or

(B) reimburse the insurer for the insurer's payment of:

(I) a claim under the policy, endorsement, contract, or agreement up to a specified dollar amount; or

(II) the expenses related to a claim.

(ii) "Deductible policy" includes a policy, endorsement, contract, or agreement that contains an aggregate limit on the insured's liability for all deductible claims in addition to a deductible limit for each claim.

(iii) "Deductible policy" does not include:

(A) a policy, endorsement, contract, or agreement that provides that the initial portion of a covered claim shall be self-insured and the insurer has no payment obligation within the self-insured retention;

(B) a policy, endorsement, contract, or agreement that provides for retrospectively rated premium payments by the insured; or

(C) a reinsurance arrangement or agreement.

(e) "Other secured obligation" means an obligation, such as a reinsurance or retrospective premium obligation, that is:

(i) payable by the insured to the insurer; and

(ii) secured by collateral that also secures a deductible obligation.

(f) "Uncovered claim" means a deductible claim that is secured by collateral but that:

(i) is not defined as a covered claim under any relevant guaranty association statute;

(ii) the insured fails to fund or pay; and

(iii) is filed with the receiver pursuant to the receivership proof of claim process.

(2) (a) If an insurer agrees to allow an insured to fund or pay deductible claims directly or through a third party administrator, except as prohibited by applicable workers' compensation insurance law:

(i) the insured shall fulfill the insured's obligations notwithstanding a delinquency proceeding; and

(ii) the receiver shall allow the funding or payment agreements to continue notwithstanding a delinquency proceeding.

(b) To the extent the insured funds or pays a deductible claim, the insured's funding or payment of a deductible claim:

(i) bars any deductible claim in a delinquency proceeding including a claim by the insured or third party claimant; and

(ii) extinguishes the obligation, if any, of the receiver or an affected guaranty association to pay the deductible claim.

(c) The insured is responsible for providing timely notice to the receiver and to all affected guaranty associations for any claim that may exceed the deductible limit.

(d) A charge of any kind may not be made against a receiver or an affected guaranty association on the basis of an insured's funding or payment of a deductible claim.

(e) The failure of an insured to fulfill the insured's obligation pursuant to a

funding agreement entitles the following to the full benefit of all collateral and other rights of recovery and reimbursement under the other provisions of this section:

- (i) the receiver that pays a deductible claim; or
- (ii) pursuant to Subsection (6)(b), an affected guaranty association that pays a deductible claim.

(3) Any reimbursement owed to an insurer under a deductible policy issued by an insurer subject to a delinquency proceeding shall be administered as follows:

(a) (i) A reimbursement from an insured for the payment of a deductible claim is a general asset of the estate to the extent that:

(A) the insolvent insurer is owed reimbursement for deductible payments made before the entry of a final order of liquidation; or

(B) the receiver is owed reimbursement for a deductible payment.

(ii) The receiver shall determine if a reimbursement is a general asset of the estate in accordance with this section.

(b) The receiver shall bill an insured for reimbursement of a deductible claim:

(i) paid by the insurer before the commencement of delinquency proceedings;

(ii) paid by an affected guaranty association upon receipt of notice of a reimbursable payment; or

(iii) paid or allowed by the receiver.

(c) The receiver may take all commercially reasonable actions necessary to collect a reimbursement owed if the insured does not make payment within:

(i) the time specified in the deductible policy; or

(ii) within 60 days after the day of billing if no time is specified in the deductible policy.

(d) The following is not a defense to the insured's reimbursement obligation under a deductible policy:

(i) the insolvency of the insurer;

(ii) the insurer's inability to perform any of the insurer's obligations under a deductible policy; or

(iii) an allegation of improper handling or payment of a deductible claim by:

(A) the insurer;

(B) the receiver;

(C) an affected guaranty association; or

(D) any combination of Subsections (3)(d)(iii)(A) through (C).

(4) The receiver shall adjust and pay uncovered claims as provided in Subsection (5). The receiver's obligation under this Subsection (4) terminates once all available collateral is exhausted. Once all available collateral is exhausted, any unpaid uncovered claims shall continue to be handled as a proof of claim in the receivership estate.

(5) (a) (i) Except where a deductible policy or other agreement conflicts with this section, any collateral held by an insurer subject to a delinquency proceeding under this chapter held under a deductible policy issued by the insurer, held for other secured obligations, or held under both shall be maintained and administered in accordance with:

(A) the deductible policy;

(B) any applicable security agreement;

- (C) any agreement regarding other secured obligations; or
- (D) any applicable combination of the deductible policy and other agreement.

(ii) This Subsection (5) applies to collateral regardless of whether the collateral is held by, for the benefit of, or assigned to the insurer under a deductible policy, agreement, or other secured obligation.

(b) (i) Subject to this Subsection (5), collateral shall be used to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or other payment obligations under Subsection (8).

(ii) Collateral shall be considered as property of the receivership estate solely for the purpose of the receiver administering and handling the collateral.

(iii) Collateral may not be considered as a general asset of the estate, except as provided in Subsections (5)(c) and (8).

(c) (i) Subject to Subsection (5)(c)(ii), collateral held to secure the insured's performance of obligations is a general asset of the estate to the extent that:

(A) the insurer pays or has paid a deductible claim before the day on which a final order of liquidation is entered and the deductible is not reimbursed by the insured;

(B) the receiver pays or has paid a deductible claim; or

(C) the insured fails to pay or reimburse to the insurer other secured obligations to the extent the payment or reimbursement is due or payable before the day on which a final order of liquidation is entered and remains unpaid.

(ii) The receiver shall determine the extent that collateral described in this Subsection (5)(c) is a general asset.

(d) The receiver shall draw down collateral to the extent necessary if the insured fails to:

(i) perform the insured's funding or payment obligations under any deductible policy;

(ii) pay deductible reimbursements within:

(A) the time specified in the deductible policy; or

(B) 60 days after the date of the billing if no time is specified in the deductible policy;

(iii) timely fund any other secured obligation; or

(iv) timely pay expenses defined in Subsection (8).

(e) (i) The receiver shall first apply or reserve collateral to the insured's obligations referenced in Subsections (5)(c)(i)(A) and (C).

(ii) The receiver shall use any collateral remaining after the application of Subsection (5)(e)(i) to:

(A) reimburse deductible claims submitted by an affected guaranty association;

(B) adjust and pay uncovered claims allowed by the liquidator;

(C) pay other secured obligations of the insured that become due and payable after the date of liquidation; or

(D) pay expenses as defined in Subsection (8).

(iii) The receiver shall:

(A) use collateral under Subsection (5)(e)(ii) in the order that the deductible claims or charges against the collateral listed in Subsection (5)(e)(ii) are received and accepted by the receiver; and

(B) continue until all valid deductible claims or charges are fully reimbursed or

paid or the collateral is exhausted.

(iv) If there are amounts payable or reimbursable under this Subsection (5)(e) and the receiver for any reason has been precluded from drawing the collateral, the receiver may establish a reserve against the collateral for those amounts. Only the collateral exceeding the reserve shall be considered remaining collateral under this Subsection (5)(e).

(f) Once all claims, other secured obligations, or expenses under Subsection (8) covered by collateral have been paid and the receiver is satisfied that no new claims, other secured obligations, or expenses under Subsection (5)(e) may be presented, the receiver shall release any remaining collateral to the insured in accordance with the deductible policy or agreement relating to other secured obligations.

(6) To the extent an affected guaranty association pays a deductible claim for which the insurer would have been entitled to reimbursement from the insured, the following provisions apply:

(a) (i) When an affected guaranty association pays a deductible claim, the affected guaranty association shall report the claim to the receiver.

(ii) The receiver shall collect from the insured all deductible amounts due as reimbursement. Subject to Subsection (8), when the insured reimbursements are collected, the receiver shall reimburse the affected guaranty association for deductible claims.

(iii) A reimbursement paid to the affected guaranty association pursuant to this Subsection (6)(a) may not be treated as a distribution under Section 31A-27a-703 or as an early access payment under Section 31A-27a-704.

(iv) If an affected guaranty association pays a deductible claim that is also subject to reimbursement under statutory net worth provisions, the affected guaranty association shall:

(A) bill the insured directly;

(B) notify the insurer of the payment; and

(C) notify the receiver of any receipt of a reimbursement under net worth provisions, which shall be credited against the insured's deductible reimbursement obligations to the extent that the reimbursement applies to deductible claims.

(b) (i) This Subsection (6)(b) applies if:

(A) the receiver declines to seek reimbursement from the insured or from any available collateral;

(B) the receiver is unsuccessful in obtaining reimbursement from the insured or from any available collateral; or

(C) the receiver fails to take available commercially reasonable actions to collect a reimbursement owed.

(ii) The receiver shall notify an affected guaranty association if the receiver declines to seek or is unsuccessful in obtaining reimbursement from the insured or from any available collateral.

(iii) If a condition described in Subsection (6)(b)(i) exists, notwithstanding whether the affected guaranty association receives the notice required by Subsection (6)(b)(ii), an affected guaranty association:

(A) may, after notice to the receiver, collect a reimbursement due from the insured for the deductible claims the affected guaranty association has paid:

- (I) on the same basis as the receiver; and
- (II) with the same rights and remedies; and
- (B) shall report any amounts collected under Subsection (6)(b)(iii)(A) from each insured to the receiver.

- (iv) The receiver shall provide an affected guaranty association with available information needed to collect a reimbursement due from the insured.

- (v) When an affected guaranty association undertakes to collect reimbursements from the insured, the affected guaranty association shall notify all other guaranty associations who have paid deductible claims on behalf of the same insured that this action is being taken.

- (vi) An amount collected by the affected guaranty association pursuant to this Subsection (6)(b) may not be treated as a distribution under Section 31A-27a-703 or as an early access payment under Section 31A-27a-704.

- (vii) An affected guaranty association may net an expense incurred in collecting a reimbursement against that reimbursement.

- (c) The receiver shall provide any affected guaranty associations with periodic reports concerning the receiver's activities in discharging responsibilities under this section, which shall include an accounting for the receiver's deductible billing and collection activities.

- (d) To the extent that an affected guaranty association pays a deductible claim that is not reimbursed either from collateral or by insured payments, the affected guaranty association has a claim for those amounts in the delinquency proceeding. Any claim by an affected guaranty association shall be reduced by reimbursed or unreimbursed expenses described in Subsection (8) incurred by the receiver.

- (e) (i) If any collateral is held under a deductible policy at the time the receiver files an application to terminate the delinquency proceeding, and it appears that an additional deductible claim may be payable by an affected guaranty association under the deductible policy, the receiver shall:

- (A) transfer to an affected guaranty association the portion of the collateral that is reasonably estimated to be necessary to pay the deductible claim; and

- (B) release any remaining portion of the collateral to the insured.

- (ii) An affected guaranty association shall handle any collateral transferred from the receiver as provided in this section.

- (f) Nothing in this Subsection (6) limits any rights of the receiver or an affected guaranty association under applicable statutory law to obtain reimbursement from an insured for a claims payment made by the affected guaranty association under a policy of the insurer or for the affected guaranty association's related expenses.

- (7) (a) The receiver shall periodically adjust the collateral being held using accepted actuarial principles and practices.

- (b) The receiver may impose a discretionary safety margin for collateral maintained.

- (c) The receiver may not be required to review collateral more than once a year.

- (d) The receiver shall inform any affected guaranty association and the insured of any collateral reviews, including the basis for any proposed adjustment.

- (8) The receiver may do the following in relation to reasonable expenses incurred in fulfilling the receiver's responsibilities under this section:

- (a) deduct the expense from reimbursements;
 - (b) deduct the expense from the collateral; or
 - (c) recover the expense through billings to the insured.
- (9) (a) A receiver shall meet the receiver's obligations under this section in a timely manner.
- (b) If an affected guaranty association believes that a receiver is not meeting an obligation under this section in a timely manner, upon motion by an affected guaranty association, a receivership court may grant relief to the affected guaranty association if the receivership court finds that the receiver is not meeting an obligation under this section in a timely manner.
- (10) This section modifies Subsection 31A-22-1010(2)(b) to the extent necessary to permit an insured to participate in the payment of the insurance claims and losses by reimbursement of a receiver or affected guaranty association as provided in this section.

Enacted by Chapter 309, 2007 General Session

31A-27a-701. Priority of distribution.

- (1) (a) The priority of payment of distributions on unsecured claims shall be in accordance with the order in which each class of claim is set forth in this section except as provided in Section 31A-27a-702.
- (b) All claims in each class shall be paid in full or adequate funds retained for the claim's payment before a member of the next class receives payment.
- (c) All claims within a class shall be paid substantially the same percentage.
- (d) Except as provided in Subsections (2)(a)(i)(E), (2)(k), and (2)(m), subclasses may not be established within a class.
- (e) A claim by a shareholder, policyholder, or other creditor may not be permitted to circumvent the priority classes through the use of equitable remedies.
- (2) The order of distribution of claims shall be as follows:
- (a) a Class 1 claim, which:
 - (i) is a cost or expense of administration expressly approved or ratified by the liquidator, including the following:
 - (A) the actual and necessary costs of preserving or recovering the property of the insurer;
 - (B) reasonable compensation for all services rendered on behalf of the administrative supervisor or receiver;
 - (C) a necessary filing fee;
 - (D) the fees and mileage payable to a witness;
 - (E) an unsecured loan obtained by the receiver, which:
 - (I) unless its terms otherwise provide, has priority over all other costs of administration; and
 - (II) absent agreement to the contrary, shares pro rata with all other claims described in this Subsection (2)(a)(i)(E); and
 - (F) an expense approved by the rehabilitator of the insurer, if any, incurred in the course of the rehabilitation that is unpaid at the time of the entry of the order of liquidation; and

(ii) except as expressly approved by the receiver, excludes any expense arising from a duty to indemnify a director, officer, or employee of the insurer which expense, if allowed, is a Class 7 claim;

(b) a Class 2 claim, which:

(i) is a reasonable expense of a guaranty association, including overhead, salaries, or other general administrative expenses allocable to the receivership such as:

(A) an administrative or claims handling expense;

(B) an expense in connection with arrangements for ongoing coverage; and

(C) in the case of a property and casualty guaranty association, a loss adjustment expense, including:

(I) an adjusting or other expense; and

(II) a defense or cost containment expense; and

(ii) excludes an expense incurred in the performance of duties under Section 31A-28-112 or similar duties under the statute governing a similar organization in another state;

(c) a Class 3 claim, which:

(i) is:

(A) a claim under a policy of insurance including a third party claim;

(B) a claim under an annuity contract or funding agreement;

(C) a claim under a nonassessable policy for unearned premium;

(D) a claim of an obligee and, subject to the discretion of the receiver, a completion contractor under a surety bond or surety undertaking, except for:

(I) a bail bond;

(II) a mortgage guaranty;

(III) a financial guaranty; or

(IV) other form of insurance offering protection against investment risk or warranties;

(E) a claim by a principal under a surety bond or surety undertaking for wrongful dissipation of collateral by the insurer or its agents;

(F) an indemnity payment on:

(I) a covered claim; or

(II) a payment for the continuation of coverage made by an entity responsible for the payment of a claim or continuation of coverage of an insolvent health maintenance organization;

(G) a claim for unearned premium;

(H) a claim incurred during the extension of coverage provided for in Sections 31A-27a-402 and 31A-27a-403; or

(I) all other claims incurred in fulfilling the statutory obligations of a guaranty association not included in Class 2, including:

(I) an indemnity payment on covered claims; and

(II) in the case of a life and health guaranty association, a claim:

(Aa) as a creditor of the impaired or insolvent insurer for a payment of and liabilities incurred on behalf of a covered claim or covered obligation of the insurer; and

(Bb) for the funds needed to reinsure the obligations described under this Subsection (2)(c)(i)(I)(II) with a solvent insurer; and

(ii) notwithstanding any other provision of this chapter, excludes the following

which shall be paid under Class 7, except as provided in this section:

- (A) an obligation of the insolvent insurer arising out of a reinsurance contract;
- (B) an obligation that is incurred pursuant to an occurrence policy or reported pursuant to a claims made policy after:
 - (I) the expiration date of the policy;
 - (II) the policy is replaced by the insured;
 - (III) the policy is canceled at the insured's request; or
 - (IV) the policy is canceled as provided in this chapter;
- (C) an obligation to an insurer, insurance pool, or underwriting association and the insurer's, insurance pool's, or underwriting association's claim for contribution, indemnity, or subrogation, equitable or otherwise, except for direct claims under a policy where the insurer is the named insured;
- (D) an amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy, which shall be paid as a claim in Class 9;
- (E) a tort claim of any kind against the insurer;
- (F) a claim against the insurer for bad faith or wrongful settlement practices; and
- (G) a claim of a guaranty association for assessments not paid by the insurer, which claims shall be paid as claims in Class 7; and
- (iii) notwithstanding Subsection (2)(c)(ii)(B), does not exclude an unearned premium claim on a policy, other than a reinsurance agreement;
- (d) a Class 4 claim, which is a claim under a policy for mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risk or warranties;
- (e) a Class 5 claim, which is a claim of the federal government not included in Class 3 or 4;
- (f) a Class 6 claim, which is a debt due an employee for services or benefits:
 - (i) to the extent that the expense:
 - (A) does not exceed the lesser of:
 - (I) \$5,000; or
 - (II) two months' salary; and
 - (B) represents payment for services performed within one year before the day on which the initial order of receivership is issued; and
 - (ii) which priority is in lieu of any other similar priority that may be authorized by law as to wages or compensation of employees;
- (g) a Class 7 claim, which is a claim of an unsecured creditor not included in Classes 1 through 6, including:
 - (i) a claim under a reinsurance contract;
 - (ii) a claim of a guaranty association for an assessment not paid by the insurer;and
- (iii) other claims excluded from Class 3 or 4, unless otherwise assigned to Classes 8 through 13;
- (h) subject to Subsection (3), a Class 8 claim, which is:
 - (i) a claim of a state or local government, except a claim specifically classified elsewhere in this section; or
 - (ii) a claim for services rendered and expenses incurred in opposing a formal delinquency proceeding;

- (i) a Class 9 claim, which is a claim for penalties, punitive damages, or forfeitures, unless expressly covered under the terms of a policy of insurance;
 - (j) a Class 10 claim, which is, except as provided in Subsections 31A-27a-601(2) and 31A-27a-601(3), a late filed claim that would otherwise be classified in Classes 3 through 9;
 - (k) subject to Subsection (4), a Class 11 claim, which is:
 - (i) a surplus note;
 - (ii) a capital note;
 - (iii) a contribution note;
 - (iv) a similar obligation;
 - (v) a premium refund on an assessable policy; or
 - (vi) any other claim specifically assigned to this class;
 - (l) a Class 12 claim, which is a claim for interest on an allowed claim of Classes 1 through 11, according to the terms of a plan to pay interest on allowed claims proposed by the liquidator and approved by the receivership court; and
 - (m) subject to Subsection (4), a Class 13 claim, which is a claim of a shareholder or other owner arising out of:
 - (i) the shareholder's or owner's capacity as shareholder or owner or any other capacity; and
 - (ii) except as the claim may be qualified in Class 3, 4, 7, or 12.
- (3) To prove a claim described in Class 8, the claimant shall show that:
- (a) the insurer that is the subject of the delinquency proceeding incurred the fee or expense on the basis of the insurer's best knowledge, information, and belief:
 - (i) formed after reasonable inquiry indicating opposition is in the best interests of the insurer;
 - (ii) that is well grounded in fact; and
 - (iii) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
 - (b) opposition is not pursued for any improper purpose, such as to harass, to cause unnecessary delay, or to cause needless increase in the cost of the litigation.
- (4) (a) A claim in Class 11 is subject to a subordination agreement related to other claims in Class 11 that exist before the entry of a liquidation order.
- (b) A claim in Class 13 is subject to a subordination agreement, related to other claims in Class 13 that exist before the entry of a liquidation order.

Amended by Chapter 290, 2014 General Session

Amended by Chapter 300, 2014 General Session

31A-27a-702. Health maintenance organization claims.

(1) In the liquidation of a health maintenance organization, a claim for uncovered expenditures has priority over a Class 3 claim as provided for in Section 31A-27a-701.

(2) A claim other than one described in Subsection (1) shall follow the priority of distribution outlined in Section 31A-27a-701.

Enacted by Chapter 309, 2007 General Session

31A-27a-703. Partial and final distributions of assets.

(1) (a) With the approval of the receivership court, a liquidator may declare and pay:

- (i) one or more partial distributions on claims as those claims are allowed; and
- (ii) a final distribution.

(b) All claims allowed within a priority class shall be paid at substantially the same percentage.

(c) A distribution under this section to a guaranty association is not an advance under Section 31A-27a-704.

(2) In determining the percentage of distributions to be paid on a claim, the liquidator may consider:

(a) the estimated value of the insurer's property, including estimated reinsurance recoverables in connection with the insurer's estimated liabilities for:

- (i) unpaid losses and loss expenses; and
- (ii) incurred but not reported losses and loss expenses; and
- (b) the estimated value of the insurer's liabilities, including estimated liabilities

for:

- (i) unpaid losses and loss expenses; and
- (ii) incurred but not reported losses and loss expenses.
- (3) Distribution of property in kind may be made at valuations set by agreement:
 - (a) between the liquidator and the creditor; and
 - (b) as approved by the receivership court.

(4) (a) Notwithstanding Subsection (1) and Part 6, Claims, the liquidator may pay benefits under a workers' compensation policy after the day on which the liquidation order is entered if:

- (i) there is an acceptance of liability by the insurer, and no bona fide dispute exists;
- (ii) payment is commenced before the entry of the liquidation order; and
- (iii) future or past indemnity or medical payments are due.
- (b) A claim payment under this Subsection (4) may continue until the applicable guaranty association:
 - (i) assumes responsibility for the claim payments; or
 - (ii) determines the claim is not a covered claim under its guaranty association law.

(c) A claim payment or related expense made under this Subsection (4) may be treated as early access distribution under Section 31A-27a-704 in accordance with an agreement with the guaranty association responsible for the payment.

Enacted by Chapter 309, 2007 General Session

31A-27a-704. Early access disbursements.

(1) As used in this section, "distributable assets" means general assets of the liquidation estate less:

- (a) amounts reserved, to the extent necessary and appropriate, for the entire Subsection 31A-27a-701(2)(a) expenses of the liquidation through and after the liquidation's closure; and

(b) to the extent necessary and appropriate, reserves for distributions on claims other than those of an affected guaranty association falling within the priority classes of claims established in Subsection 31A-27a-701(2)(c).

(2) (a) An early access payment to an affected guaranty association shall be made:

- (i) as soon as possible after the day on which a liquidation order is entered;
- (ii) as frequently as possible after the first early access payment, but at least annually if there are distributable assets available to be distributed to the affected guaranty association; and
- (iii) in an amount consistent with this section.

(b) An amount advanced to an affected guaranty association pursuant to this section shall be accounted for as an advance against distributions to be made under Section 31A-27a-703.

(c) (i) Subject to Subsection (2)(c)(ii), if sufficient distributable assets are available, amounts advanced need not be limited to the claims and expenses paid to date by the affected guaranty association.

(ii) Notwithstanding Subsection (2)(c)(i), the liquidator may not distribute distributable assets to an affected guaranty association in excess of the anticipated entire claims of the affected guaranty association falling within the priority classes of claims established in Subsections 31A-27a-701(2)(b) and 31A-27a-701(2)(c).

(3) (a) Within 180 days after the day on which an order of liquidation is entered by the receivership court, and at least annually after that date, the liquidator shall:

- (i) apply to the receivership court for approval to make early access payments out of the general assets of the insurer to an affected guaranty association having an obligation arising in connection with the liquidation; or
- (ii) report that the liquidator has determined that there are no distributable assets at that time based on financial reporting as required in Section 31A-27a-117.

(b) The liquidator may apply to the receivership court for approval to make early access payments more frequently than annually based on additional information or the recovery of material assets.

(4) Within 60 days after the day on which the receivership court approves an application under Subsection (3), the liquidator shall make an early access payment to an affected guaranty association as indicated in the approved application.

(5) (a) Notice of each application for early access payments, or of a report required pursuant to this section, shall be given in accordance with Section 31A-27a-107 to the affected guaranty associations.

(b) Notwithstanding Section 31A-27a-107, the liquidator shall provide the affected guaranty associations described in Subsection (5)(a) with at least 30 days actual notice of the filing of the application with a complete copy of the application before any action by the receivership court.

(c) An affected guaranty association may:

- (i) request additional information from the liquidator, who may not unreasonably deny the request; and
- (ii) object as provided in Section 31A-27a-107 to:
 - (A) any part of each application; or
 - (B) any report filed by the liquidator pursuant to this section.

(6) In each application regarding early access payments, the liquidator shall, based on the best information available to the liquidator at the time of the application, provide at a minimum:

- (a) to the extent necessary and appropriate, the amount reserved for:
 - (i) the entire expenses of the liquidation through and after the liquidation's closure; and
 - (ii) distributions on claims falling within the priority classes of claims established in Subsections 31A-27a-701(2)(b) and (2)(c);
- (b) the calculation of distributable assets;
- (c) the amount and method of equitable allocation of early access payments to each affected guaranty association; and
- (d) the most recent financial information filed with the receivership court by the liquidator.

(7) (a) Each affected guaranty association that receives a payment pursuant to this section agrees, upon depositing the payment in any account to its benefit, to return to the liquidator any amount of these payments that may be required to pay:

- (i) a claim of a secured creditor; or
- (ii) a claim falling within the priority classes of claims established in Subsection 31A-27a-701(2)(a), (2)(b), or (2)(c).

(b) A bond may not be required of an affected guaranty association.

(8) Without the consent of an affected guaranty association or an order of the receivership court, the liquidator may not offset the amount to be disbursed to the affected guaranty association by the amount of any special deposit, any other statutory deposit, or any asset of the insolvent insurer held in that state unless the affected guaranty association actually receives the deposit or asset.

Enacted by Chapter 309, 2007 General Session

31A-27a-705. Unclaimed and withheld funds.

(1) (a) If any funds of the receivership estate remain unclaimed after the final distribution under Section 31A-27a-703, the funds shall be placed in a segregated unclaimed funds account held by the commissioner.

(b) If the owner of any of the funds described in Subsection (1)(a) presents proof of ownership satisfactory to the commissioner within two years after the day on which the delinquency proceeding terminates, the commissioner shall remit the funds to the owner.

(c) The interest earned on funds held in the unclaimed funds account may be used to pay any administrative costs related to the handling or return of unclaimed funds.

(2) (a) If any amounts held in the unclaimed funds account remain unclaimed for two years after the day on which the delinquency proceeding terminates, the commissioner may file a motion for an order directing the disposition of the funds in the court in which the delinquency proceeding was pending.

(b) Any costs incurred in connection with the motion made under this Subsection (2) may be paid from the unclaimed funds account.

(c) A motion under this Subsection (2) shall identify:

- (i) the name of the insurer;
- (ii) the names and last-known addresses of the one or more persons entitled to the unclaimed funds, if known; and
- (iii) the amount of the funds.
- (d) Notice of the motion shall be given as directed by the court.
- (e) Upon a finding by the court that the funds have not been claimed within two years after the day on which the delinquency proceeding terminates:
 - (i) the court shall order that a claim for unclaimed funds, and any interest earned on the claim that has not been expended under Subsection (1), is abandoned; and
 - (ii) the funds shall be disbursed under one of the following methods, the amounts may be:
 - (A) deposited in the general receivership expense account under Subsection (3);
 - (B) transferred to the state treasurer and deposited into the General Fund; or
 - (C) (I) used to reopen the receivership in accordance with Section 31A-27a-803; and
 - (II) distributed to the known claimants with approved claims.
- (3) The commissioner may establish an account for the following purposes:
 - (a) to pay general expenses related to the administration of receiverships; or
 - (b) to advance funds to a receivership that does not have sufficient cash to pay its operating expenses.
- (4) Any advance to a receivership estate under Subsection (3)(b) may be treated:
 - (a) as a claim under Section 31A-27a-701 as may be agreed at the time the advance is made; or
 - (b) in the absence of an agreement described in Subsection (4)(a), in a priority determined to be appropriate by the receivership court.
- (5) If the commissioner determines at any time that the funds in the account created in Subsection (3) exceed the amount required, the commissioner may transfer the funds or any part of the funds to the state treasurer, and the transferred funds shall be deposited into the General Fund.

Enacted by Chapter 309, 2007 General Session

31A-27a-801. Condition on release from delinquency proceedings.

- (1) Unless otherwise provided in a plan approved by the guaranty associations, an insurer that is subject to a rehabilitation proceeding may not take an action listed in Subsection (2) until all payments by all guaranty associations of or on account of the insurer's contractual obligations are repaid to the guaranty associations with:
 - (a) all expenses related to the payments by all guaranty associations of or on account of the insurer's contractual obligations; and
 - (b) interest on all the payments.
- (2) Until an insurer that is subject to a rehabilitation proceeding complies with Subsection (1), the insurer may not:
 - (a) be permitted to:
 - (i) solicit or accept new business; or

- (ii) request or accept the restoration of any suspended or revoked license or certificate of authority;
- (b) be returned to the control of its shareholders or private management; or
- (c) have any of its assets returned to the control of its shareholders or private management.

Enacted by Chapter 309, 2007 General Session

31A-27a-802. Discharge of liquidator and termination of liquidation proceedings.

(1) When all property justifying the expense of collection and distribution is collected and distributed under this chapter, the liquidator shall apply to the receivership court for an order discharging the liquidator and terminating the proceeding.

(2) The receivership court may grant the application and make any other orders, including orders to:

- (a) transfer any remaining funds that are uneconomic to distribute; or
- (b) pursuant to Subsection 31A-27a-703(3), assign an asset that remains unliquidated, including a claim or cause of action, as may be considered appropriate.

Enacted by Chapter 309, 2007 General Session

31A-27a-803. Reopening liquidation.

(1) After a liquidation proceeding is terminated and the liquidator discharged, the commissioner may at any time petition the court that was the receivership court to reopen the proceedings for good cause, including the discovery of additional property.

(2) If the court is satisfied that there is justification for reopening the proceedings, the court shall order the proceedings reopened.

Enacted by Chapter 309, 2007 General Session

31A-27a-804. Disposition of records during and after termination of liquidation.

(1) Whenever it appears to the receiver that records of the insurer in receivership are no longer useful, the receiver may recommend to the receivership court, and the receivership court shall direct what records shall be destroyed.

(2) (a) If the receiver determines that records should be maintained after the closing of the delinquency proceeding, the receiver may reserve property from the receivership estate for the maintenance of the records.

(b) Any amounts retained under this Subsection (2) are an administrative expense of the estate under Subsection 31A-27a-701(2)(a).

(c) Any records retained pursuant to this Subsection (2) shall be transferred to the custody of the commissioner, and the commissioner may retain or dispose of the records as appropriate, at the commissioner's discretion.

(d) Records of a delinquent insurer that are transferred to the commissioner:

- (i) may not be considered a record of the department for any purpose; and
- (ii) are not subject to Title 63G, Chapter 2, Government Records Access and

Management Act.

Amended by Chapter 382, 2008 General Session

31A-27a-805. External audit of the receiver's books.

- (1) As used in this section, "books" means:
 - (a) the business operations of the receiver;
 - (b) the accounting systems and procedures of the receiver; and
 - (c) the financial records of the receiver.
- (2) (a) The receivership court may, as it considers desirable, order an audit to be made of the books of the receiver relating to any receivership established under this chapter.
 - (b) A report of each audit under this Subsection (1) shall be filed with:
 - (i) the commissioner; and
 - (ii) the receivership court.
- (3) The books of the receivership shall be made available to the auditor at any time without notice.
- (4) The expense of each audit shall be considered a cost of administration of the receivership.

Enacted by Chapter 309, 2007 General Session

31A-27a-901. Ancillary conservation of foreign insurers.

- (1) The commissioner may initiate an action against a foreign insurer pursuant to Section 31A-27a-201 on any of the grounds stated in that section or on the basis that:
 - (a) any of the foreign insurer's property is sequestered, garnished, or seized by official action in its domiciliary state or in any other state;
 - (b) (i) the foreign insurer's certificate of authority to do business in this state is revoked or a certificate of authority is never issued; and
 - (ii) there is a resident of this state with an unpaid claim or in-force policy; or
 - (c) it is necessary to enforce a stay under Chapter 28, Guaranty Associations.
- (2) If a domiciliary receiver is appointed, the commissioner may initiate an action against a foreign insurer under this section only with the consent of the domiciliary receiver.
- (3) (a) An order entered pursuant to this section shall appoint the commissioner as conservator.
 - (b) The conservator's title to assets shall be limited to the insurer's property and records located in this state.
- (4) (a) Notwithstanding Subsection 31A-27a-201(3), the conservator shall hold and conserve the assets located in this state until:
 - (i) the commissioner in the insurer's domiciliary state appoints its receiver; or
 - (ii) an order terminating conservation is entered under Subsection (7).
- (b) Once a domiciliary receiver is appointed, the conservator shall turn over to the domiciliary receiver all property subject to an order under this section.
- (5) The conservator may liquidate the property of the insurer that may be

necessary to cover the costs incurred in the initiation or administration of a proceeding under this section.

(6) (a) The court in which an action under this section is pending may issue a finding of insolvency or an ancillary liquidation order.

(b) An ancillary liquidation order shall be entered for the limited purposes of:

(i) liquidating assets in this state to pay costs under Subsection (5); or
(ii) activating applicable guaranty associations in this state to pay valid claims that are not being paid by the insurer.

(7) The conservator may at any time petition the receivership court for an order terminating an order entered under this section.

Enacted by Chapter 309, 2007 General Session

31A-27a-902. Domiciliary receivers appointed in other states.

(1) (a) A domiciliary receiver appointed in another state is vested by operation of law with title to, and may summarily take possession of, all property and records of the insurer in this state.

(b) Notwithstanding any other provision of law regarding special deposits, a special deposit held in this state for a guaranty association in this state as the only beneficiary shall be, upon the entry of an order of liquidation with a finding of insolvency, distributed to the guaranty association in this state as early access distributions, subject to Section 31A-27a-704, in relation to the lines of business for which the special deposit is made.

(c) The holder of a special deposit shall account to the domiciliary receiver for all distributions from the special deposit at the time of the distribution.

(d) The following shall be given full faith and credit in this state:

(i) a statutory provision of another state;
(ii) an order entered by a court of competent jurisdiction in relation to the appointment of a domiciliary receiver of an insurer; and
(iii) a related proceeding in another state.

(e) For purposes of this chapter, another state means any state other than this state.

(f) This state shall treat all foreign states as reciprocal states.

(2) The commissioner shall immediately transfer title to and possession of all property of the insurer under the commissioner's control to a domiciliary receiver:

(a) upon appointment of the domiciliary receiver in another state;
(b) unless otherwise agreed by the domiciliary receiver; and
(c) including all statutory general or special deposits other than special deposits where that state's guaranty association is the only beneficiary.

(3) (a) Except as provided in Subsection (1), the domiciliary receiver shall handle a special deposit or special deposit claim in accordance with the statutes pursuant to which the special deposit is required and applicable federal law.

(b) All amounts in excess of the estimated amount necessary to administer the special deposit and pay the unpaid special deposit claims shall be considered general assets of the estate.

(c) (i) Subject to Subsection (3)(c)(ii), if there is a deficiency in a special deposit

so that a claim secured by the special deposit is not fully discharged from the special deposit, the claimant may share in the general assets of the insurer to the extent of the deficiency at the same priority as other claimants in the claimant's class of priority under Section 31A-27a-701.

(ii) The sharing described in Subsection (3)(c)(i) shall be deferred until the other claimants of the class are paid percentages of their claims equal to the percentage paid from the special deposit.

(iii) The intent of Subsection (3)(c)(ii) is to equalize to the extent provided in this Subsection (3) the advantage gained by the security provided by the special deposit.

Enacted by Chapter 309, 2007 General Session